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FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

No. 281-282

IN THE MATTER OF GRANADA APARTMENTS, INC.,
DEBTOR.

WEIGHTSTILL WOODS, COURT TRUSTEE,
Petitioner,

vs.

CITY NATIONAL BANK AND TRUST CO. OF CHICAGO, AND OTHERS,
Respondents.

PETITION FOR WRITS OF CERTIORARI.
APPENDICES, Pages 59-70.
SUPPORTING BRIEF, Pages 71-75.

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SUBJECT INDEX.

Statutes Cited.

Rules Cited.

Cases Cited.

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WEIGHTSTILL WOODS, COURT TRUSTEE,

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vs.

CITY NATIONAL BANK AND TRUST CO. OF CHICAGO, AND OTHERS,

Respondents.

PETITION FOR WRITS OF CERTIORARI TO REVIEW ACTION OF CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT UPON TWO APPEALS TAKEN BY RESPONDENTS FROM THE DISTRICT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

PETITION FOR WRITS OF CERTIORARI.

To the Honorable Justices of the Supreme Court of the United States:

1. Petitioner Weightstill Woods, as Court Trustee, prays the issuance of writs of certiorari to review the decision, of the United States Circuit Court of Appeals for

the Seventh Circuit rendered March 26, 1940. In two appeals taken by respondents, that decision (a) reversed the findings of fact and the decree of the District Court as entered by that court on May 2, 1939; and sustained the motions of respondents; to (b) consolidate their inconsistent and competing appeals with each other, and also to (c) consolidate them with other appeals then pending, to the extent of making the original transcript of record in one of such appeals the record common to all appeals; and (d) gave directions to the District Court to allow claims for fees and expenses by respondent City National Bank and Trust Company as former indenture trustee, and a legal firm, Defrees, Buckingham, Jones and Hoffman, as its attorneys, and certain persons as a former bondholder's committee, and otherwise.

The Circuit Court of Appeals also denied several motions made by the Court Trustee to dismiss these appeals. These motions were made in September and October 1939, before any record was printed and before briefs were filed. Motions were newly made in June 1940. By the motions, your petitioner contends that jurisdiction to hear either of said appeals is absent in the Circuit Court of Appeals, because statutory steps were not taken by the respondents. These motions to dismiss are discussed below at pages 50-51 and at Point IV on page 73 of the supporting brief. The denial of these motions and the assertion of jurisdiction over these appeals by the Circuit Court of Appeals, is an additional refusal of due process under the Fifth Amendment. This question of jurisdiction over reorganization appeals arising under Section 250, was involved in a recent case before the Second Circuit Court of Appeals. That case (*re Prudence Bonds Corporation,* 111 Fed. (2d) 37) is now pending before Your Honors. Certiorari was granted June 3, 1940; docket No. 69 for October Term, 1940.

STATEMENT AS TO JURISDICTION.

2. The Opinion by the Circuit Court of Appeals was dated March 26, 1940. Petition for rehearing was denied by the Circuit Court of Appeals on May 7, 1940. The Opinion is reported at 111 Fed. (2d) 834. Mandate was stayed pending this review. Timely application for review by this court is made on July 25, 1940. The petition is presented in accordance with Section 240 (a) of the Judicial Code as amended, and Rule 38 of this court as amended.

3. The Bondholders and the Court Trustee, were not made parties to the proceeding in the state court for appointment of City National as Indenture Trustee, and are not bound by any action in the foreclosure proceedings. *Green* v. *Brophy*, 110 Fed. (2d) 539, 542; *Elieff* v. *Lincoln National Life Insurance Company*, 369 Ill. 408; *National Licorice Company* v. *Labor Board*, 309 U. S. 350 at 362.

4. The jurisdiction of the District Court over the subject matter is based upon Sections 2 (21), 70 e 3, and 642 of the Bankruptcy Act as amended. The jurisdiction over respondents personally is based upon voluntary application and consent of respondents under Section 23 (b) of said Act. When approving the plan on July 14, 1937, the District Court wrote a special reservation of power in that order as follows:

> "Anything herein contained to the contrary notwithstanding, all expenses of administration in this *or any other court* shall be subject to the approval of this court." (R. 149, PR. 110.)

5. This petition urges that the Circuit Court of Appeals wrongfully denied motions to dismiss these appeals

which are inadequately taken and presented; and said court by its orders in these appeals has overstepped its jurisdiction, has refused to follow the plain language of procedural statutes, has abrogated rules of procedure established by the Supreme Court for the conduct of appeals, has disregarded pleadings and other admission of record, has nullified said provisions of the Bankruptcy Act as amended, has exercised appellate power contrary to statute, and thereby has denied to owners of debtor estate a day in court with due process of law; contrary to the Fifth Amendment to the Constitution of the United States. (See supporting Brief at page 71 below.)

Independently of the constitutional questions herein presented, the Supreme Court of the United States should take jurisdiction on certiorari for the purpose of deciding whether or not this Circuit Court of Appeals (C. C. A. 7) or the Sixth Circuit Court of Appeals, is correct in their conflicting views on the power of a bankruptcy court to review fee awards made by a state foreclosure court. The Seventh Circuit Court of Appeals in this case held that the Federal Court had no such power. (PR. 961-963.) The Sixth Circuit Court of Appeals holds that the Federal Court does have such power.

Butzel v. *Webster Apartments Co.*, 112 Fed. (2d) 362, 364, (C. C. A. 6, 1940).

SUMMARY OF THE MATTER INVOLVED.

In the District Court.

6. Petitioner is the duly appointed Court Trustee in the Federal reorganization proceedings of the Granada Apartments, Inc., an Illinois real estate hotel corporation whose Illinois charter was issued in 1929.[1] The proceedings are pending in the United States District Court at Chicago on both voluntary and involuntary petitions filed in April of 1937. A plan of reorganization was proposed, which was confirmed by the court on July 14, 1937, by appropriate order, from which no appeal was taken.

7. The new corporation, Granada Apartments Hotel Corporation, under an Illinois charter dated October 30, 1937, has been operating the reorganized property outside of court since November 1, 1937, pursuant to a conveyance from the Court Trustee, as ordered by the District Court on October 22, 1937. The present matter in litigation was excepted from that conveyance and remains vested in the Court Trustee, pursuant to an order of District Court directing the Court Trustee to carry it to a conclusion.

8. For ten years prior to the filing of the reorganization petitions in the District Court, the Granada property had been in court because of financial difficulties. These difficulties are evidenced by various litigations (see Appendix "A") with consequent expense and delay in meeting creditors demands. Such delay is fraud. The law of Illinois so provides (*Weber* v. *Mick*, 131 Ill. 520). The District Court found that such litigations were started for the purpose of delaying, embarrassing and harassing

1. Record 411, Printed Record 776.

creditors of the Granada estate,[2] and did hinder, defraud and delay such creditors.[3] The findings by the District Court show the detail history of those prior litigations.

9. Respondent City National Bank and Trust Company of Chicago was not named in the Granada bonds indentures. But it voluntarily sought to be and had been appointed successor trustee of the Granada property in foreclosure proceedings in the state court. It remained in possession until the petitioner was given possession on May 17, 1937, by order of the District Court.

10. On June 23, 1937, respondent City National filed in the District Court a proof of claim for services rendered in the state court proceedings,[4] which included a claim for solicitors fees. This proof of claim asserts a state court decree dated December 18, 1936. The Bondholders Committee, which the District Court found to be a mere department of respondent's bank,[5] and not entitled to any payment for services or expenses,[6] filed its claim on September 14, 1937.[7] Objections to both claims were made by the Court Trustee,[8] asserting among other things that said state court by its decree refused to allow the claims of respondents, and that they are without equity.

11. Voluntarily on August 30, 1937, respondent City National Bank and Trust Company of Chicago filed in the reorganization proceedings its report and account as appointed indenture trustee,[9] to which the petitioner, Court Trustee, objected and made counterclaim[10] asking that cer-

2. R. 417, PR. 785.
3. R. 419, PR. 788.
4. R. 103-106, PR. 79-86.
5. R. 415-416, PR. 782-784.
6. R. 424-426, PR. 794-795.
7. R. 108-110, PR. 82-83.
8. R. 112, PR. 84.
9. R. 160, PR. 111-126.
10. R. 175-183, PR. 127-139.

tain items be surcharged. This counterclaim and objections urged (a) that respondent City National and its counsel had served conflicting and adverse interests in the state foreclosure proceedings,[11] and that they were not entitled to fees; the District Court after hearing evidence so found.[12] (b) That respondent City National had committed waste upon the Granada property,[13] and the District Court after hearing the evidence so found.[14] (c) That damages treble the amount of such waste should be assessed against respondent,[15] and the District Court so found.[16] (d) That respondent City National was a voluntary trustee *de son tort*, was liable for its acts, but had no equity to claim payment for services,[17] and the District Court so found.[18] (e) That respondent City National failed to require a full accounting from its predecessor trustees for which failure it should be surcharged[19] and held responsible for, and the District Court found that there had been numerous instances when the questionable dealings of prior fiduciaries (for a list of these "fiduciaries" see Appendix "B") should have been examined and accounted for,[20] and that (f) respondent City National itself and its attorneys (who had handled the Granada affairs for many years) knew of these transgressions of the law by these prior parties, but demanded no accounting and in some instances even aided and abetted the completion of illegal schemes and transactions commenced by prior fiduciaries, and that respondent should be held ac-

11. R. 175, PR. 127.
12. R. 418-420, PR. 787-788; R. 413, PR. 779; R. 414, PR. 781.
13. R. 176, PR. 128-129.
14. R. 419-420, PR. 789-790.
15. R. 176-177, PR. 129-130.
16. R. 419, PR. 789, Par. 54.
17. R. 177, PR. 130.
18. R. 419, PR. 789; R. 421, PR. 791.
19. R. 178, PR. 132.
20. R. 408-415, PR. 772-782.

countable for losses to debtor estate arising from such acts and failures to act.[21]

12. More particularly the objections and counterclaim of the petitioner stated that respondent and its counsel had wrongfully refused and failed to turn over certain Granada cash funds ($1,990.86) pursuant to court order of May 17, 1937,[22] and the District Court so found.[23] This is not only a civil wrong, but a criminal act forbidden by Section 29 of the Bankruptcy Act. (*U. S.* v. *Shapiro,* 111 Fed. (2d) 375.) It was further charged that respondent in 1936 without authority had used Granada funds in the amount of $10,186, to pay court costs, fees and legal expenses never earned,[24] and the court so found.[25] That respondent as trustee in possession prior to May 1937, had overcharged for management fees[26] and the District Court so found.[27] That the costs of the present proceedings should be assessed against respondent and the court so found.[28] That respondent wilfully refused to pay certain current expense bills which it had incurred, due and owing from respondent to creditors, which bills necessarily had to be paid by petitioner to obtain continuance of utility and other services at Granada hotel,[29] and the court so found.[30] That by reason of collusive conduct in breach of fiduciary duties respondent City National Bank and Trust

21. R. 414, PR. 781, Par. 36; R. 412, PR. 778, Par. 26; R. 413, PR. 779, Par. 28; R. 418, PR. 787, Par. 48; R. 409, PR. 773, Par. 14; R. 409, Pr. 774, Par. 16; R. 410, PR. 775, Par. 20; R. 411, PR. 776-77, Par. 23; R. 411-412, PR. 777-778, Par. 24-25; R. 413-414, PR. 780, Par. 32; R. 414, PR. 781, Par. 35; R. 415, PR. 782, Par. 37; R. 417, PR. 785, Par. 44; R. 419, PR. 788, Par. 50-51; R. 419, PR. 789, Par. 54; R. 420, PR. 789, Item 4.

22. R. 179, PR. 133-134.

23. R. 420, PR. 789, Item 3.

24. R. 179, PR. 134.

25. R. 420, PR. 789, Item 6.

26. R. 180, PR. 134-135

27. R. 420, PR. 789, Item 5.

28. R. 419-420, PR. 789, Par. 54 and Item 1.

29. R. 181, PR. 136-137.

30. R. 419, PR. 789, Par. 54.

Company failed to charge Arlington, Inc., (a nearby hotel of which respondent City National was also trustee (see Appendix "C")); either the contract or fair and reasonable rate for heat, water and refrigeration services furnished by Granada, to the damage of the debtor estate in the sum of over $19,000 for which damages the respondent's account should be surcharged,[31] and the District Court so found.[32] That respondent as trustee of both Granada and Arlington by further breach of fiduciary duty and damage to Granada, paid valet commissions to Arlington, Inc., which commissions were earned by Granada rental space prior to May of 1937,[33] and the District Court so found.[34] That respondent by its neglect and in breach of its duty as trustee failed to make any effort to rent vacant space on lobby floor in the Granada property to the waste and damage of the debtor estate,[35] and the District Court so found.[36] Other breaches of trust conduct were also charged and found by the trial court.[37]

13. On September 14, 1937, the Granada "Committee" filed in the District Court its claim for fees and expenses.[38] The claim was for $2,285.21. On the same date there was filed in the same court the "Petition of Defrees, Buckingham, Jones & Hoffman, for allowance of counsel fees."[39] This claim was separate from City National petitions for counsel fees; and expressly limited itself to the alleged work done for the "committee". These claims and proofs of claim were later disallowed by the District Court.

31. R. 181-182, PR. 137.
32. R. 419-420, PR. 789, Par. 54 and Item 8 of R. 420, PR. 790.
33. R. 182, PR. 138.
34. R. 420, PR. 790, Item 7.
35. R. 182, PR. 138.
36. R. 420, PR. 790, Item 9.
37. R. 420, PR. 789-790, Items 2, 4, 10.
38. R. 217, PR. 156.
39. R. 209, PR. 151.

14. The District Court ruled thus *against respondents:*

"By the decree December 18, 1936, the presiding Judge of the Superior Court refused to allow or consider any accounting of the funds." (Finding 30.)[40]

"The court finds that the claim No. 9 and all petitions by City National Bank and by the Bondholders Committee and its counsel for allowances shall all be denied, disallowed and dismissed for want of equity * * *." (Finding 58.)[41]

"That all petitions and claims for expenses and allowances by said City National, Bondholders Committee, and their attorneys and counsel, be now wholly disallowed and dismissed for want of equity." (Paragraph 2 of decree.)[42]

BEFORE CIRCUIT COURT OF APPEALS.

15. Respondents filed in District Court a notice of appeal June 1, 1939; and also filed on June 12, 1939, a petition in the office of the Clerk of the Court of Appeals seeking an appeal by leave. These separate appeals were docketed as No. 7060 and No. 6986. Over objections by the Court Trustee, these two appeals later were consolidated by order October 4, 1939, in the Seventh Circuit Court of Appeals. The appeals so taken by respondent City National Bank and Trust Company of Chicago, its attorneys and Committee, were taken from some findings of fact by the District Court, which findings were adverse to and against the respondents, and also from that part of the decree of the District Court which denied fees as trustee to City National and fees for its counsel, Defrees, Buckingham, Jones and Hoffman, and denied expense moneys to the "Bondholders Committee."

16. The assignment of errors for City National and associates, attacked only a small part of the findings, (see below at Appendix "D") and attacked *only a few* para-

40. R. 413, PR. 779.
41. R. 421, PR. 791.
42. R. 425, PR. 794-795.

graphs of the decree. The briefs for City National and associates, in the Circuit Court of Appeals argued *only part* of the findings mentioned by the assignment of errors, and argued only portions of the decree that were specified in their assignment of errors. Those findings and parts of the findings which stand uncontested by the "assignment of errors" which respondents filed[43] on June 12, 1939, are listed at Appendix "D". The legal effect of respondent's failure to assign and argue error to these findings, is to admit their accuracy and truth. Petitioner urges that the uncontested findings are sufficient to support the ruling against the respondents made by the District Court; and urges that Rule 52 of federal civil procedure forbids any reversal of any finding made in this record. Despite this record status, the Circuit Court of Appeals ordered the reversal of *all* the findings and the entire decree. Such action is outside the jurisdiction of any court of review.

SURPRISE ISSUES AND THE DENIAL OF DUE PROCESS.

17. This petitioner urged upon the Circuit Court of Appeals, that the pleadings and the findings disclosed in the record from the District Court, show such breaches of trust as to compel the disallowance of fees and expense monies to the respondents City National, the Bondholders' Committee and their counsel, pursuant to the applicable local law of Illinois; and to require affirmance of those rulings by the District Court decree.

18. The theory of respondents was that (1) these breaches of trust did not occur or (2) if they did they were still entitled to fees. Thus were the issues drawn and settled in the District Court. The wrongs by the respondents as claimed by this petitioner, may be briefly outlined as follows:

(a) The representation, by City National, its law-

43. PR. 817-831.

yers and members of its Granada Bondholder's Committee, of Arlington, Inc., a competing hotel, not disclosed to Granada bondholders.

(b) The failure by City National, the Committee and their counsel to demand an accounting from predecessor trustees of Granada, despite the knowledge of City National, the Committee and the attorneys of wrongs committed by these trustees causing losses to Granada bondholders.

(c) The use by City National of its false Granada Bondholders' Committee, to represent to the District Court Judge that certain items (which were not debts against the Granada estate) should be provided for by the plan of reorganization, and ordered to be paid out of the debtor estate.

(d) The failure by City National to seek tenants and uses for the real property over which it asserted trusteeship, and its waste of the property and sundry income.

19. As is pointed out later in this petition, the Circuit Court of Appeals did not proceed upon any theory or issue which had been drawn by the parties to this litigation. It side-stepped the issues of the case. The issues so avoided are shown hereinafter as Salient Omissions. The Circuit Court of Appeals decided the case upon new issues chosen and announced by its Opinion. This was done without having given this petitioner *notice or opportunity to be heard* upon these surprise issues. This Appellate action was a substantial departure from regular and ordinary appellate procedure. Petitioner submits this is a substantial denial of due process of law, guaranteed to debtor estate by the Fifth Amendment to the Constitution of the United States.

Cities Service Co. v. *Dunlap,* 308 U. S. 208.

Mathiesen & Hegler Zinc Co. v. *Industrial Commission,* 373 Ill. 293.

Postal Telegraph Cable Co. v. *Newport,* 247 U. S. 464, at 475.

One of the surprise issues used by the Court of Appeals was that of "conspiracy." The Opinion of the appeal court stated:

> "Thus, we conclude there is no justification for charging City National with these various items, with the exception of what we have said with reference to Item III. In reaching this conclusion, we are not unmindful of the rule which requires us to accept findings of the trial court supported by substantial evidence. Here, however, they are predicated upon a theory of the existence of a conspiracy to which appellants were parties. We are satisfied no such conspiracy was proven."

Obviously conspiracy could not be the substantive basis for a cause of action. Civil conspiracy at most is aggravation of damages. It is never a cause of action. *Dean* v. *Kirkland,* 301 Ill. App. 495, 504. More than this however, "conspiracy" was not pleaded, argued or briefed by any party to the appeal below. It was not an issue in either court. But the Court of Appeals makes the lack of "conspiracy," a determining factor upon which a reversal of the trial court's findings is based. No notice or hearing was given this petitioner upon this surprise issue.

20. The Opinion by the Circuit Court of Appeals also defeats the purposes and the spirit of Your Honor's Opinion in *Case* v. *Los Angeles Lumber Company,* 308 U. S. 106. Your ruling in that case should have controlled *Re Granada.* The Granada Opinion indicates that the Court of Appeals was irritated by some procedure in the District Court. This petitioner submits that such criticism by the Circuit Court of Appeals was misdirected and unfounded on this record.

21. The chief reason for the attitude of the Court of Appeals, seems to be that the trial judge had been thorough in his examination of the facts involved. And that as a result the record was so long, as to impose upon an

Appellate Court. Thus at page two of the Opinion the Court of Appeals said:

> "Since 1928 there have been numerous successor trustees and much litigation. The hearing in the court below, which culminated in the orders complained of, covered all of this period and apparently included a review of the acts and doings of all persons, corporations and attorneys, as well as the various matters of litigation had concerning the property.
>
> "The record is of such volume that we find it difficult to make even a summary of the situation in an Opinion of reasonable length. It is almost as difficult to obtain a clear picture of the involved issues."

Then with thinly veiled sarcasm, the Opinion remarked:

> "As stated, *the investigation, inquiry, or whatever it may be called*, upon the issues thus made, assumed a wide range, including everything which transpired in connection with the debtor property from the time of the first bond issue down to the hearing. Although we are convinced that much of what was heard and considered was irrelevant and immaterial to the issues before the court. It seems important to relate *some* of the more salient matters." (Italics supplied.)

22. True to this warning the Opinion of the Circuit Court of Appeals then proceeded to relate only "*some of the more salient matters*" as pleaded, and proved in the District Court. By the same token, the Opinion omitted other "salient [44] matters" of even far greater importance.

These omissions are discussed below at pages 15 to 32. The Opinion also contains *salient assumptions* by the Court of Appeals. These are discussed under "Principal Questions" at pages 36 to 50. The magnitude of these omissions and commissions is impressive.

"*The investigation, inquiry, or whatever it may be called*", was asked for and largely conducted by respondents. Most of the exhibits and documents prior to 1932 were offered by respondents. The voluntary testimony of their witness Mr. O'Brien covered the entire period. (R. 991-1045; PR. 473-504.) The pleading by respondents demanded a full inquiry. (PR. 111-126.)

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44. Webster defines "salient" as "1. Leaping; bounding; jumping." And it is assumed that the court advisedly used the word in this sense as also does this petitioner.

First Salient Omission by the Circuit Court of Appeals.

23. THE BREACH OF TRUST BY THE SELF-STYLED "GRANADA BONDHOLDERS PROTECTIVE COMMITTEE." The findings by the trial court regarding this so-called committee were thorough and complete. These findings may be summarized as follows:

(a) The Bondholders Committee had no will of its own. It was organized in April, 1933, by and among minor officers, employees and nominees of City National Bank and Trust Company.[45]

(b) The "Corporate Reorganization Division" is a department of City National which organizes bondholder's committees for the purpose of having City National appointed trustee. This department has secured by this manner of operation some 425 corporate reorganizations for City National to be trustee.[46]

(c) The Granada Bondholder's Committee existed solely as a service unit in the City National Trust Department. The committee at all times was controlled and dominated by City National. In the minds of City National witnesses, there was no distinction between the Committee and the Reorganization Division of the City National and these witnesses could not distinguish expenditures by the Committee from expenditures by the City National as Trustee. The same personnel passed upon any matter that came up either to the Committee or the Trust Department.[47]

(d) The same individuals who used their personal names to persuade the public to deposit bonds, were the persons who handled the business for *City National* after it had become depositary or fiduciary in some other capacity.

45. R. 414, PR. 781.
46. R. 415, PR. 782-783.
47. R. 416, PR. 783-784.

(e) The "Granada Bondholder's Committee" petitioned and succeeded in getting its employer, City National, appointed as successor trustee.[48] Thus City National was *"self-appointed"* by its own Committee.[49]

(f) The minutes produced in court do not show any constructive action looking toward reorganization of Granada property ever taken by the Committee.[50]

(g) The adjoining Lincoln Park Manor and Arlington Hotels are also being reorganized. Likewise, there are City National Bondholder's Committees in charge of these properties. Likewise City National was appointed Trustee of Arlington and Lincoln Park Manor.[51] Both of those properties were customers of Granada since 1924, buying heat and water and refrigeration services delivered through pipes from Granada Hotel.

(h) The Bondholder's Committees for Lincoln Park Manor, Arlington and Granada were interlocking, the two top individuals in the Corporate Reorganization Division of the City National Bank and Trust Company were members of all three committees. This constituted a serious breach of trust which disentitles the Granada Committee to any compensation for services to Granada.[52]

(i) There was an adverse financial interest between the Arlington and the Granada properties.[53] The Granada bargained and sold heat, hot and cold water and refrigeration to Arlington.[54] City National officials in 1934 charged off of Granada's books a credit of $4,080 owed to Granada by Arlington.[55] The purpose and effect of this

48. R. 414, PR. 781.
49. R. 417, PR. 786.
50. R. 416, PR. 783.
51. R. 415-416, PR. 783-784.
52. R. 416, PR. 784.
53. R. 418, PR. 787.
54. R. 416, PR. 784.
55. R. 416, PR. 784.

attempted reduction was to enable Arlington to pay off its taxes, and to leave Granada with a tax bill of about $60,000.[56]

(j) These three bondholders committees have been represented throughout by the same attorneys, Defrees, Buckingham, Jones & Hoffman, as also has City National as Trustee of the three properties.[57]

(k) The record does not show that there was ever a disclosure to the bondholders that the Granada Committee was merely a business getting device for City National, or that the Committee employed a firm of attorneys that formerly and currently represented adverse interests, nor does it appear that any bondholder or creditor knew that the City National as Trustee and the Bondholder's Committee and the attorneys occupy similar relationships to the Arlington and Lincoln Park Manor properties.[58]

(l) Continuously since the Committee was organized in 1933, these adverse situations of interest have existed and were fully known to the Committee, City National and counsel, and it was a breach of trust to fail to make full disclosure and to resign from all but one of the relationships. The breach of confidence thus in evidence is so fundamental as to destroy all right for any of these parties to have compensation or reimbursement for their services.[59]

24. These substantial findings by the District Court were set forth in full at pages 9 to 37 of the Court Trustee's brief in appeals 7060 and 6986. At page 9 of the petition for rehearing filed in the Circuit Court of Appeals by the Court Trustee, the following was stated:

"The Opinion overlooks the fact testified to by all

56. R. 417, PR. 784.
57. R. 418, PR. 787.
58. R. 419, PR. 788.
59. R. 419, PR. 788.

of the City National witnesses, that its reorganization division and personnel did all the management work at Granada for Central Republic Trust Company as Trustee, and later for the receiver of that trust company, from the time Central Republic Trust Company began to manage the property. The witnesses for City National admitted that in fact City National had managed the property from the time that Central Trust Company was merged into the Central Republic Trust Company. The transfer from receiver of Central Republic Trust Company to City National was a merely formal act, to recognize the situation that had existed in fact, since the Cody Trust Company went into receivership in December, 1933. In truth the City National was the successor to the management by the Cody Trust Company. At the trial the testimony of both the Cody Trust employees and City National employees, confirms the truth of this paragraph."

25. The wrongdoing by the Reorganization Division of respondent, City National and its alter ego the Granada Bondholder's Committee, began before the time of the formal taking over as Trustee by City National. That fact is admitted by the pleading for Committee. At page 77 of the Court Trustee's brief (Nos. 7060 and 6986) it is shown further that the witnesses of the Committee and of City National by oral testimony fully admitted the charges as confirmed by the findings. The President of the respondent testified before the Judge in District Court[60] that, the Committee *"were officers of my bank."*

26. Petitioner submits that these frauds are so deep that the depositary agreement under which the "committee" received the bonds, in equity is fraudulent and void.

27. The Opinion by the Circuit Court of Appeals passes over these undisputed and damaging facts and findings with a studied nonchalance. By the process of understatement it rewrites the facts and findings so as to exclude

60. R. 764, PR. 336.

some breaches of trust which the District Court discovered from the evidence. The Opinion said:

> "It is true that the committee, organized in 1933, one of whose members was an officer of the City National, had their office and performed their functions in quarters provided by the City National, and employed the services of a division of the City National, whose business was to furnish service to committees representing bondholders. While there may be valid criticism of the relation thus shown, we do not see how that, in itself, could affect the legal duties or obligations of City National, and certainly not prior to the time the latter assumed the duties and responsibilities as trustee."

28. Thus the Circuit Court of Appeals does not mention the central fact which was most obvious that the committee was a mere tool of City National, and that as such in breach of its trust, at all times it was acting for City National and not for the bondholders. That fraud and nondisclosure alone is sufficient to disentitle the Committee, the lawyers and City National to any allowance for fees or expense moneys, from the estate of the bondholders. (See page 74 below.)

DESPITE THE FACT THAT THE COMMITTEE BY SAID PLEADING HAD ADMITTED ITS TRUE STATUS, THIS OMISSION WAS MADE BY THE CIRCUIT COURT OF APPEALS.

On September 14, 1937, the Granada "Committee for the Protection of Holders of First Mortgage Bonds" filed in the District Court its petition for fees and expenses. This petition stated that[61] the "*Committee had incurred certain* expenses and *obligations* for the use of the facilities and *personnel* of City National Bank and Trust Company of Chicago * * *". (Italics ours.)

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61. R. 221, PR. 158-159.

Petition by Committee in District Court, Restates and Admits Many Charges and Findings Made Herein.

> "That during the year 1932 CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO formed a special organization composed of men who were experienced in managing real estate properties (etc.), * * * that the salaries of the men in this organization, together with the rent, light, postage and other incidental(s) expenses incurred in carrying on the work of this organization, were allocated to the various committees. * * *"[62] (Italics ours.)
>
> "* * * that certain of your petitioners were so retained and were so employed, not as members of any committee, BUT AS EMPLOYEES OR OFFICERS DEVOTING THEIR TIME TO THE REORGANIZATION DIVISION OF CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO."[63] (Emphasis ours.)

The petition then recites that this committee "retained City National * * * to render services as Depositary of the Committee in this and in some other instances * * *." Then follows a description of the work done by the "Reorganization Division of City National Bank and Trust Company of Chicago at the instance of your petitioners."[64]

Following the petition is "Exhibit 'A' ",[65] which lists certain expenses incurred by the Committee and totaling $2,285.21. Among other expenses appears the following:

> "Pam & Hurd, Attorneys, for legal services rendered incident to procuring resignation of Central Republic Company as Depositary, and appointment of City National Bank and Trust Company of Chicago as Successor Depositary.
>
> ....$50.00"

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62. R. 222, PR. 159.
63. R. 223, PR. 159.
64. R. 225, PR. 161.
65. R. 229, PR. 164.

The petition is signed by the Committeemen, and then by:

"Defrees, Buckingham, Jones & Hoffman, *Their Attorneys.*"[66]

This petitioner submits that the printed record properly italicizes the words *"Their Attorneys"*. The multiple representation by these attorneys of many adverse interests without disclosure, makes most difficult at times the determination of whose attorneys they really are. This is the next topic for discussion.

Second Salient Omission by the Circuit Court of Appeals.

29. THE BREACH OF TRUST BY CITY NATIONAL AND ITS ATTORNEYS. The findings by the District Court include these:

"Since the Granada property was built in 1924, one set of attorneys have prepared the financial papers and have represented Chicago Trust Company, Cody Trust Company, Thuma, Wendstrand and Hall, as agents and nominees for said companies, and also for Central Republic Trust Company and the Bondholders Committee for Granada property. Throughout ten years of litigation a connected purpose is shown to prevent a clearance of the property from Court entanglements. * * * Every effort has been made to pay with moneys from the debtor estate, court expenses and legal expenses for maintaining and continuing these various litigations, and to protect the bankers who initiated the bond issue and sold the bonds and attorneys from their own wrongs and mistakes."[67]

"City National Exhibit 'X' prepared early in 1924 provided an estimated basis of compensation between Granada Hotel and Arlington Hotel. This document was prepared by Defrees, Buckingham, Jones and Hoffman, attorneys. * * * These attorneys have represented throughout, the Bondholders Committee for Granada, the Arlington and the Lincoln Park

66. R. 227, PR. 163.
67. R. 417, PR. 785.

Manor properties, and likewise the City National as Trustee of these properties."[68]

"Absent a joint operation or a unit reorganization, there was an adverse financial interest between Granada and each of the other properties, because of the services rendered by the Granada property to the other hotels. Neither the attorneys, nor the committees which have an interlocking personnel, nor the City National as Trustee, could rightfully continue a common relationship to all these properties once this adverse interest was disclosed."[69]

"Instead of reorganizing three properties as a unit or resigning from two of the trusts, City National officials at the beginning of 1934 consummated a course of action which had been planned for a year, by charging off a balance of Four Thousand Eighty Dollars ($4,080) that had been regularly billed to Arlington and placed upon the Granada books of account, for the heat, hot and cold water and refrigeration services furnished by Granada during the year 1933. The charge (of which said sum is the unpaid balance) was made pursuant to the Barton contract."[70]

"The purpose and effect of this attempted reduction was to enable the Arlington between 1933 and the present time to pay off entirely its taxes, and to leave the Granada with a tax bill about Sixty Thousand Dollars ($60,000) when these proceedings were begun. At the same time this was done, the former rate of compensation paid by Lincoln Park Manor to Granada was continued and collected without change by respondents and City National as its trustee; and is being paid today by a lessee of that hotel. This deliberate purpose to favor the Arlington, as against Granada by the reduction in charge forcibly made, is an additional breach of trust wholly without any warrant or reason and an intentional derogation from prior operation under the Barton contract with Granada as modified in 1930."[71]

"All these facts were known or available to City National. The records show that the attorneys whom

68. R. 418, PR. 787.
69. R. 418, PR. 787.
70. R. 416, PR. 784.
71. R. 416-417, PR. 784-785.

they now retain, have been active in all of these matters since 1924, and have had to do with most of these litigations. It does not appear that City National or anyone tried at any time to have the Codys or the Cody Trust Company or its officials, or the Chicago Trust Company, or its officials, or any successors or receivers for them, or Wendstrand and the other indemnitors on the court bonds that were released by buying the Pick furniture the second time with bondholders' money, and buying new furniture from La Salle Furniture and Supply Company when Pick & Company took away part of the furniture, to have any of these persons perform their promises and duty to the Granada property and the Granada bondholders."[72]

30. The effect of these findings is (a) that City National and the attorneys were representing adverse interests by breach of trust without disclosing that fact to their beneficiaries, and (b) that the attorneys and City National had knowledge of the fraudulent practices of the prior fiduciaries, but demanded no accounting from such fiduciaries for the reason that the attorneys had been instrumental in effecting the fraud.

31. These were substantial findings. Respondent and the attorneys never denied or justified their current representation of adverse interests. Even in the Circuit Court of Appeals the same attorneys represented (x) City National, (y) Arlington, Inc., (z) the "Committee" for Granada:

32. Respondent and the attorneys never denied or justified the long representation by the attorneys of the prior fiduciaries whose breaches of fiduciary conduct it was the duty of City National as successor trustee to examine and demand an accounting for,

33. The Opinion of the Circuit Court of Appeals avoided these admitted facts. It fails to perform any

72. R. 414-415, PR. 781-782.

of the high duties of the public coroner. The Opinion, unless reversed, will bury without autopsy the record body of these blatant frauds.

34. Nothing in the Opinion even hints that the conduct of the legal firm Defrees, Buckingham, Jones & Hoffman had ever been questioned. This cryptic Opinion states without analysis, that the court could not see how City National could be held for the acts of prior fiduciaries. How indefensible was the conduct of said attorneys is easily confirmed by a reading of the canons of professional ethics, set forth below at Appendix "E". The rank disregard of these canons was called to the attention of the Court of Appeals by this Court Trustee.

35. The Court of Appeals perhaps found the charges made and proven in the trial court so unpleasant, affecting as they did the reputations of a financial organization and law firm, with offices on La Salle Street, Chicago, Illinois, that it omitted all mention of those uncontested charges, despite the fact that they are at the heart of the controversy. The Opinion ignores wholly the principle that *knowledge of the agent is knowledge of the principal.* Defrees, Buckingham, Jones & Hoffman had the knowledge and were agents of City National, their principal. Every questionable act and dealing of prior fiduciaries was well known to the attorneys. City National stands accountable and responsible for that knowledge and for its failure to perform duties and acts of trusteeship, called for by the knowledge, for the benefit of the bondholders and the assembling and protection of the estate; and for liens prior to the first mortgage bonds. It assumed that responsibility in writing.[73]

36. When City National states by its pleading that the tax lien is not collectible against Granada Estate, it admits knowledge that all these liens are debts of Cody

73. R. 2140, PR. 536.

Trust and its successors. (See par. 47 at page 30 below.)

The Bankruptcy Act as amended provides:

> "* * * Courts of bankruptcy are hereby invested * * * with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this Act XX to;
>
> "(21) Require receivers or *trustees appointed in proceedings not under this Act,* assignees for the benefit of creditors, and agents authorized to take possession of or to liquidate a person's property, *to deliver the property in their possession or under their control to the receiver or trustee appointed under this Act * * * and in all such cases to account to the court for the disposition by them of the property of such bankrupt or debtor:* Provided, however, That such delivery and accounting shall not be required, except in proceedings under chapters 10 and 12 of this Act (paragraphs 501 to 676, 801 to 926 of this title), if the receiver or trustee was appointed, the assignment was made, or the agent was authorized more than four months prior to the date of bankruptcy. *Upon such accounting, the court shall reexamine and determine the propriety and reasonableness of all disbursements made out of such property* by such receiver, *trustee,* assignee, or agent, either *to himself or to others, for services and expenses under such* receivership, *trusteeship,* assignment, or agency, *and shall,* unless such disbursements have been approved, upon notice to creditors and other parties in interest, by a court of competent jurisdiction prior to the proceeding under this Act, *surcharge such* receiver, *trustee,* assignee, or agent *the amount of any disbursement determined by the court to have been improper or excessive.* (Section 2.)
>
> "The remedies of the trustee for the avoidance of such transfer or obligation and of such preference shall be cumulative; provided however, that the trustee shall be entitled to only one satisfaction." (Section 67 d 3.)

By this petition the Court Trustee seeks that satisfaction from City National Bank and Trust Company of Chicago.

37. The record and findings show that there was a non-disclosure to the Granada creditors and bondholders

by the self-styled Granada Bondholders' Committee of its conflicting representation of adverse interests. The record and findings also show that City National Bank and Trust Company of Chicago and their attorneys, Defrees, Buckingham, Jones & Hoffman, were guilty of similar non-disclosures to their pretended beneficiaries.

38. This petitioner submits that there has already been too much non-disclosure and that the Opinion by the Circuit Court of Appeals in making these foregoing and the following salient omissions subserves this vicious non-disclosure practice of the respondents. The words of the Opinion consummate and effect a burial of the frauds shown by the record. Against that abuse of judicial power this petition urges supervision by the Supreme Court.

Third Salient Omission by the Circuit Court of Appeals.

39. THE ACCOUNTS OF THE RESPONDENT WERE NEVER APROVED BY THE STATE COURT IN THE FORECLOSURE PROCEEDINGS. The Opinion by the Circuit Court of Appeals relies heavily upon the state court foreclosure proceedings in finding respondent entitled to various fees for itself and counsel, and as an explanation and justification of certain acts of respondent and its counsel. Thus the Opinion states:

> "Item V. This item in the amount of $11,365.42, represents 4% of debtor's gross income charged for management. Of this amount $2512.23 was received by the Central Republic Trust Company during its tenure as trustee, and approved by the *State Court*. Of the amount charged by City National, the sum of $6189.60 was also approved by the *State Court*. The trust deed authorized the retention of reasonable management fees of the trustee and its agents. The *State Court* found the amounts retained to be reasonable *and approved* the same by decree." (Italics supplied.)

At another place in the Opinion the court had said:

> "Item III, in the amount of $1990.86, includes a

number of items, the largest of which is $1608.56. In the proceeding in the Superior Court of Cook County, referred to heretofore, *an accounting was had between City National and the debtor.* By the decree entered in that court, December 18, 1936, the account was adjudicated, and the City National was expressly authorized to apply said sum upon the indebtedness due it. It appears to be the position of the Court Trustee that the order of the Superior Court was void. We conclude to the contrary and, that City National properly applied this amount to its claim *as authorized by that court.*" (Italics supplied.)

This ruling by Seventh Circuit Court of Appeals is in direct conflict with contrary ruling by the Sixth Circuit Court of Appeals, who hold that the Bankruptcy Act and the Bankruptcy Court are paramount over prior state court foreclosure proceedings and allowances.

Butzel v. *Webster Apartments Company,* 112 Fed. (2d) 362 at 364.

40. Thus we see that the Opinion is bottomed upon its assertion, that the decree in the state court foreclosure proceedings bars any inquiry by the District Court or the Court Trustee as to the disposition of the several sums of money involved. One question then is: Do the contents of the decree of the state court justify this reliance which is based upon the theory of *res adjudicata?* The answer must be in the negative. The state court judge expressly stated in the decree, that he did not approve or allow the accounts of City National. In his own hand with ink he had written into that decree apt negative words as follows:[74]

"The court by the entry of this decree does not approve the accounts of the trustee in possession (City National) of the premises involved herein."

41. Thus the decree of the Superior Court of Cook County (December 18, 1936) expressly refused to accept

74. Original record Vol. III, p. 1279, PR. 128.

or confirm any accounting by respondent City National with anyone. This portion of the foreclosure decree wherein the state court rejected the accounting of City National, was set forth *haec verba* by the Court Trustee in his *answer, counterclaim and objections,* filed on September 9, 1937.[75] The District Court found:[76]

> "By the decree December 18, 1936, the presiding Judge of the Superior Court refused to allow or consider any accounting of the funds."

The contrary action by Circuit Courts of Appeals is an arbitrary refusal to examine or to follow the record.

42. Although the result of this litigation must necessarily depend upon the determination of the effect of the words of the state court judge, as placed by him in the decree (if the theory of bankruptcy law used by the Seventh Circuit in their opinion were correct), the debtor estate received no assistance from the Circuit Court of Appeals. That court ignored or overlooked this central portion of the state court's decree as pleaded by the Court Trustee and as found by the trial court. Truly this omission is not only salient but dominant.

43. The Circuit Court of Appeals reversed the findings of the District Court by omnibus order. By that act it avoids the embarrassing task of mentioning or analyzing the refusal of the state court judge to approve City National's accounts. It is plain that the Court of Appeals relied upon its arbitrary statement about the state court decree, in reversing Item III; IV; V; and VI. Each of them is aptly found by the District Court to be due the Court Trustee from City National. The sum of these various items is $44,042.93 plus interest.

44. An additional wrong by City National was the use of its "Bondholder's Committee" to present to the District Court and Granada owners a plan for reorganization

75. R. 175, PR. 128.
76. R. 413, TR. 779.

of Granada, in which without disclosure of the facts it listed as unquestionable debts the balance of $3,000 and interest on a conditional sales contract for furniture; and the balance of $4,000 and interest on a purported Superior Court receiver's certificate. After the plan had been confirmed, investigation made by the Court Trustee, established for the present record and the District Court found, that these items were not Granada obligations, but were Cody Trust and Chicago Trust Company obligations.

45. On these spurious liens City National had been paying out Granada monies from 1933 to 1937 (during which period unpaid state tax liens doubled and no monies were paid to bondholders or stockholders of Granada). The framing of the misleading plan and the failure to make disclosure, were intended to bury this misconduct by City National, and to secure and did secure, approval of the plan without disclosure to or knowledge of these real facts by the Court Trustee or owners. Inasmuch as the City National claim was reserved and continued for further hearing at the time the Granada plan was confirmed by the District Court on July 14, 1937, the liability of City National and associates for such misrepresentation by the plan, continues and remains an issue in this litigation before this court.

46. This is true all the more, because the Circuit Court of Appeals had ruled (104 Fed. (2d) 528) that those liens were recognized and closed by the plan, so that the Court Trustee could not successfully defend against the holders of those liens; namely, the Indemnity Insurance Company of North America, and Continental Illinois National Bank and Trust Company of Chicago. After the Circuit Court of Appeals on the second appeal (111 Fed. (2d) 834 at 843) confirmed order for payment of the claim by Indemnity Insurance Company of North America on its receiver's certificate, it was useless to proceed further to defend against claim by Continental Illinois National Bank and

Trust Company of Chicago, upon the conditional sales furniture contract. That claim had support from similar language which respondents had put into the Granada plan. Whereupon the Court Trustee caused those claims to be settled with cash and satisfied. This additional loss of $10,000 is plainly due to the unfaithful conduct of City National Bank and Trust Company and associates, as accounting trustee now before this court.

47. The fraudulent nature of such concealment and loss is further shown by the fact that City National by its same pleading now before this court, opposed repayment to Cody Trust and its Receiver for the tax lien listed in the plan. Although that tax lien, and the furniture lien, and the receiver certificate lien all arose out of the same situation by which Cody Trust, was seeking to escape from the duty it had assumed in writing to remove all liens. (PR. 120, 536.)

48. By its decree on December 18, 1936, the state court refused to approve any accounting by City National. The District Court heard the accounting in 1937. The District Court found in detail that City National owed these amounts to the Court Trustee. The Circuit Court of Appeals omits mention of the state court's refusal to hear the accounting, and says that the District Court did not have jurisdiction of it. This Court of Appeals reversed the findings of the District Court. The reversal is not only a refusal to read the state court decree. It is also a refusal to give effect to the Bankruptcy Act, which directs the Bankruptcy Court to review administrative allowances in all courts. (Section 2(21).)

49. The state court refused to approve those accounts and said so;[77] the United States District Court disapproved those accounts and said so;[78] and the Circuit

77. Original record Vol. III, page 1279, PR. 128.
78. R. 420, PR. 789, Items 3, 4, 5 and 6.

Court of Appeals then said the state court had approved them and that the District Court had no jurisdiction to disapprove the accounts. We submit that action has no foundation in the record, and is flatly contrary to the Bankruptcy Act. (See pages 27 and 74.)

50. Petitioner submits that the *state court* had a duty to say whether it had or had not approved the accounts The state court did not approve the accounts. The Opinion of the Court of Appeals ignored, overlooked and omitted any mention of the state court's language that it refused approval for the accounts of City National. This ruling of the state court was unquestioned and was admitted by the pleadings now at bar, by respondent City National Bank and Trust Company of Chicago. Its "report and account" filed August 30, 1937 (which was signed and sworn to by the respondent's assistant trust officer) stated to the District Court:[79]

> "* * * your petitioner * * * represents to the court that the chancellor in said foreclosure proceedings in and by said decree expressly indicate(d) that by the entry thereof, he did not purport to approve any account of your petitioner as successor trustee in possession of the said premises * * *."

51. The Circuit Court of Appeals has ignored this admission made by City National by its initial pleading in the District Court, wherein City National submits itself and its accounting for a settlement. This matter having been admitted by respondents by their pleading in the District Court was not in issue before that court, nor before the Circuit Court of Appeals. The heart of the Opinion by the Court of Appeals seeks to decide contrary to this admission by pleading by respondents in the District Court.

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79. R. 162, PR. 115.

Fourth Salient Omission by the Circuit Court of Appeals.

52. ALL FORECLOSURE PROCEEDINGS AND THE DECREE IN THE STATE COURT CLAIMED ONLY A DEBT DUE FROM THE DEFUNCT GRANADA HOTEL CORPORATION (PREDECESSOR OF THE DEBTOR) AND NOT AGAINST GRANADA APARTMENTS, INC., THE DEBTOR. On August 30, 1937, respondent City National filed in the District Court its report and account, as an appointed Indenture Trustee of the Granada property. This report and account[80] sought trustee's fees, fees for counsel in the various proceedings in other courts and expenses for the bondholder's committee. This report and account represented that by reason of the state court foreclosure proceedings, it had a claim against the debtor, *Granada Apartments, Inc.* (PR. 111-126.)

53. On September 9, 1937, the Court Trustee filed his "answer and counterclaim" to the above report. This answer stated[81] as follows:

> "State Court cannot determine an allowance for this court * * * Also said Superior Court decree is void because City National and its counsel there sought to serve conflicting interests and to act in opposite capacities * * * Also said Superior Court decree nowhere says that any sum for any purpose was due to anyone, *from the debtor now at bar.*" (Italics supplied.)

54. A portion of the decree in state court was included as "City National's Exhibit 'N'," in the present record.[82] That exhibit states:[83]

> "15. The court (state court) states the account of the said cross-complainant, City National Bank and Trust Company of Chicago, a corporation, as successor trustee as aforesaid, (for its own use and bene-

80. R. 160-171, PR. 111-126.
81. R. 175, PR. 127-128.
82. R. 1055, PR. 511.
83. R. 1056, PR. 512.

fit) against the said defendant and cross-defendant, Granada *Hotel Corporation,* a corporation, as follows:

"Fees of cross-complainant for services as successor trustee	$ 2,560.00
"Cross-complainant's solicitors fees	9,000.00
"Court Reporter's and stenographer's fees	39.90
"Amount to be paid for additional minutes of title	100.00
	$11,699.90"

(Italics supplied.)

55. The findings by the District Court ruled:[84]

"Granada Hotel Corporation (predecessors of the debtor) was dissolved by the Superior Court of Cook County, Illinois, in cause numbered 50985, upon due complaint of the attorney general of Illinois; and decree entered for dissolution May 17, 1930. All parties knew it was defunct more than two (2) years, when for the first time in August, 1933, proceedings to foreclose first trust deed and to issue receiver's certificate were attempted by cross-bill. *All proceedings and the decree of the Superior Court claim only a debt due from said defunct corporation and no one else.*" (Emphasis ours.)

56. Despite this orderly and substantial pleading, and in spite of the above findings of the District Court, the Opinion of the Circuit Court of Appeals assumes that the decree of the Superior Court has language to award certain monies to respondent from *Granada Apartments, Inc.,* the debtor herein, instead of limiting, as the District Court found (which the state court had stated expressly), to a recovery only from the *Granada Hotel Corporation.*

57. The Circuit Court of Appeals does not mention this substantial holding by the Bankruptcy Court, but totally ignores it and says that the decree of the state court found certain monies due for trustee's and solicitor's fees and otherwise. That assumption is false.

84. R. 413, PR. 779.

58. It seems impossible that the Court of Appeals which had said:[85]

> "The findings are of such serious character that we have read and reread them, and searched the record with a view of endeavoring to ascertain if they find support."

could have *accidentally* overlooked this finding by the District Court, built upon the state court record.

59. Although the result of this controversy must depend primarily upon the determination of whether or not respondent City National, and the committee, had a claim against Granada Apartments, Inc., the debtor, or only a claim against the defunct Granada Hotel Corporation, the Court of Appeals spoke not one word concerning that essential issue, which was decided *against* respondents by the findings of both the state and federal trial courts. Instead of answering this fundamental problem, the appeal court was content to consume many pages of the Opinion with other matter not connected with the designation of the parties to the state court proceedings. It then assumes that the debtor was the party against whom the fees and other items of the foreclosure suit are charged and predicates its argument upon such assumption. A good portion of the Opinion's argument is devoted to the proposition that the state court found this or that amount *due to* City National.

60. The remoteness of this argument is apparent. It is an attempt to cross the bridge long before it is reached. The first thing we must determine is *from whom* such fees are due,—not *to whom*. Obviously no bankruptcy or reorganization court is concerned with any claim unless that claim is against the bankrupt or debtor. That determination should be a matter of first consideration. The District Court did consider and determine this matter adversely to respondent. The Circuit Court of Appeals did

85. Page 4 of the Opinion, PR. 958.

not consider or determine it at all. About this matter the appeal court said nothing. It is truly a salient omission. Despite this omission the Opinion of the Circuit Court of Appeals reversed all findings by the trial court.

The present grievance of this record, has been well stated as public complaint, in an address by Roscoe Pound, Esq., made before the American Bar Association.

> "Under the conditions which obtain in the United States the written opinion filed in the appellate court has two purposes. It serves as the basis of advice to clients and of decision by the courts in other cases according to the common-law technique of decision and doctrine of precedents. This is the function which has always belonged to recorded judicial experience of decision in our system. *But in addition it serves as a check upon the judiciary, under our system of checks and balances, in a polity in which so many legal questions are political and political questions are legal.* For the original purpose there was no need for the endless repetition of formal judicial pronouncements upon the same point nor of labored discussion of every point raised by counsel, whether or not they involve new questions or new applications of old ones. Even less is there call for elaborate discussions of questions of fact. *But for the other purpose it is generally felt to be important* that the reasons of every judicial decision in our highest courts be set forth fully in written opinions, accessible to the profession and to the public, and *that the courts should pronounce definitely upon every point raised by counsel. Here is a subject on which courts* and judicial councils *should be at work in the near future, if our common-law technique is not to break down.*" (Italics ours.)
>
> (From "The Judicial Office today" by Roscoe Pound, XXV American Bar Association Journal, September, 1939, page 731 at 733.)

THE PRINCIPAL QUESTIONS PRESENTED.

A. WHEN A "BONDHOLDER'S COMMITTEE" IN VIOLATION OF ITS FIDUCIARY RELATION TO THE BONDHOLDERS, HAS REPRESENTED ADVERSE INTERESTS WITHOUT DISCLOSING SUCH FACT, DOES THE LAW PERMIT FEES AND EXPENSES TO BE ALLOWED TO SUCH A COMMITTEE IN A FEDERAL REORGANIZATION PROCEEDING?

61. The Opinion of the Circuit Court now under review, gives directions to the District Court to allow fees and expenses to the Committee, City National and their attorneys as follows:

> "* * * We have examined the claims submitted by City National and the committee for what is designated as out-of-pocket expenses, and we see no reason why those claims should not be allowed in full. As to all other claims for compensation and fees, for services rendered in connection with the reorganization proceeding, the amounts mentioned by the court are inadequate, and the court should determine and fix what is the reasonable and customary charge for services thus rendered.
>
> "These appeals are reversed with directions that the court proceed in accordance with the views expressed, costs to be taxed to the court trustee."

62. Petitioner lays aside for the moment the *amounts* of fees to which any of the respondents make claim. This petitioner challenges the *right* of the committee and the other respondents to *any* fees. At page 21 of the depositary agreement the committee agrees to serve without compensation. As pointed out at the "First Salient Omission" in this petition, the committee was guilty also of many serious breaches of trust. The fact of the dual representation of adverse interests was not denied by the committee. Under the circumstances here present, it seems to your

petitioner that the allowance of any fees or expense money to the faithless committee would be unconscionable.

63. Petitioner submits that by making the "First Salient Omission" the Circuit Court of Appeals showed, that it did not consider fundamental basic facts which would of themselves disentitle the committee to any fees or expense money. Thereby the Circuit Court of Appeals committed error in directing the trial court on remandment to allow fees and expense money to the committee. Such a holding by the Circuit Court of Appeals can result only in the breakdown of all law regarding fiduciary relationships.

64. Petitioner also urges that the farthest reach of the decree in the state court allows to respondents a recovery against only the Granada *Hotel Corporation*, and not a fee or expense allowance against the debtor, Granada Apartments, Inc. This is set forth under the title of "Fourth Salient Omission" at pages 32-35 of this petition. The legal effect is *res judicata* against respondents and in favor of the Debtor Estate. *Bank of America, et al.* v. *Jorjorian*, 303 Ill. App. 184, 24 N. E. 896, 897. (Page 75 below.)

65. The petitioner believes that a determination of these questions is most important since there now are and for a long time past have been operating in this City of Chicago, many so-called "Bondholders Protective Committees" which like this committee are only adjuncts or departments of various banks and trust companies, and that the personnel of such committees are not interested in protecting the bondholders (as the misleading committee name suggests), but in arranging for their employer (Trust Company and law firms) to get fees as trustee or otherwise, and to hide the wrongdoings of prior fiduciaries.[86]

86. The Report of the Joint Legislative Committee to Investigate Bondholders Committees, Stockholders' Committees, Creditors' Committees, Certificate Holders' Committees, Corporations, Trustees and Fiduciaries shows that these practices are also rampant in New York. State of New York, Legislative Document (1936) No. 66, pages 24, 25. A discussion of the work of this Legislative Committee is to be found at page 172-3 of the book "False Security" (The Betrayal of the American Investor) by Bernard J. Reis, Equinox Cooperative Press, Inc., New York, 1937.

66. Armed with bonds which trusting bondholders have deposited, the "committees" seldom do more than petition the court (as was done in this case) for the appointment of their employer as trustee or receiver. Obviously such committees do not tell the bondholders of the mismanagement of the bondholder's property by such employers. The committee's only allegiance is to the self-appointed trustee. This is confirmed by the fact that the attorneys for the committee and the attorneys for the trustee are the same. All of these breaches of trust have been proven against this Granada Bondholders Protective Committee. And yet the Circuit Court of Appeals directs the trial court to allow such a committee fees and expense monies. Your petitioner submits that this "reshearing of a shorn lamb" by such a faithless committee should not have the approval of any court.

B. AS MATTER OF LAW, ARE A TRUSTEE AND ITS ATTORNEYS (ALL OF WHOM HAVE COMMITTED BREACHES OF TRUST AND HAVE REPRESENTED ADVERSE INTERESTS WITHOUT DISCLOSURE) ENTITLED TO FEES IN A FEDERAL REORGANIZATION PROCEEDING?

67. The Opinion of the Circuit Court of Appeals, dealt with the question of fees for the attorneys and the trustee, in the same manner that it disposed of the question of fees for the volunteer "Granada Bondholders' Committee." It directs the trial court to allow reasonable fees to the City National as Trustee, and to Defrees, Buckingham, Jones & Hoffman, as counsel for the trustee and the committee.

68. As was pointed out in this petition ("Second Salient Omission" at page 23), the City National Bank and Trust Company of Chicago, represented as trustee and

otherwise adverse interests without disclosing such fact. These adverse interests were:

(a) City National was trustee of Granada.
(b) City National was trustee of Arlington.
(c) City National was trustee of Lincoln Park Manor.

As trustee of the last two named hotels, it contracted with itself as trustee of Granada for refrigeration, heat and water services to be supplied by Granada to Arlington, and Lincoln Park Manor. The fact of these three trusteeships was established at trial and is not here denied by City National. No showing was made by City National that it had ever disclosed to the bondholders or creditors of Granada, that it was acting as trustee of the other adjoining hotel properties.

69. Under these circumstances (mention of which was wholly omitted by the Opinion of the Circuit Court of Appeals) this petitioner urges that the City National by such duplicity has disentitled itself to any fees whatsoever. It is also to be noted that the City National was the moving force which created and controlled the so-called Bondholders Protective Committee, and as such was wholly responsible for the breaches of trust committed by such committee. Please refer to page 18 above.

70. Under the title of the "Second Salient Omission" (at page 23) we have dealt with the breaches of trust by the legal firm of Defrees, Buckingham, Jones and Hoffman. The uncontested facts show that this firm has handled most of Granada's affairs since 1924, and continuously has had full knowledge of same. The revealing testimony of a member of that firm covers a liberal share of this record, shows that his firm was not careful to avoid representing conflicting and adverse interest. Since 1924 in

Granada matters, this firm has represented the following people and trust companies:

(1) The Chicago Trust Company: Indenture Trustee.[87]

(2) The Cody Trust Company: Financial Agent.[88]

(3) Mr. Thuma: Foreclosing Second Mortgage.[89]

(4) Mr. Wenstrand, Nominee for Cody.[90]

(5) Mr. Hall, Agent for Cody.[91]

(6) The Central Republic Trust Company: Indenture Trustee.[92]

(7) The Granada Bondholders' Protective Committee.[93]

(8) The Arlington Bondholders Protective Committee.[94]

(9) The Lincoln Park Manor Bondholders Committee.[95]

(10) City National, as trustee of Granada.[96]

(11) City National, as trustee of Arlington.[97]

(12) City National, as trustee of Lincoln Park Manor.[98]

In many courts, this firm represented the adverse interests of (a) City National, (b) Arlington, Inc., (c) the "Committee" for Granada.

71. At least two of these "trust companies"[99] who were clients of this firm have become insolvent and gone

87. R. 417, PR. 785.
88. R. 417, PR. 785.
89. R. 417, PR. 785.
90. R. 417, PR. 785.
91. R. 417, PR. 785.
92. R. 417, PR. 785.
93. R. 418, PR. 787.
94. R. 418, PR. 787.
95. R. 418, PR. 787.
96. R. 418, PR. 787.
97. R. 418, PR. 787.
98. R. 418, PR. 787.
99. Cody Trust Company and Central Republic Trust Company.

out of business, but when that happened these professional reorganizers installed the succeeding trust company from where they left off with the old. It is a question whether these lawyers are working for the trust companies or the trust companies for them. The trial court, after a month of hearings, found that *neither* the lawyers *nor* the trust companies were working for the bondholders.[100]

72. Litigation against colleagues at the bar is not a pleasant task. Your petitioner, as Court Trustee, would prefer another course, had it been consistent with his duties as an officer of the court, defending this debtor estate. This petitioner might have avoided personal reference, had this law firm not claimed certain fees for pretended services to the Granada estate, disallowed as against debtor, by the state court judge after hearing the foreclosure proceedings. (See pages 30-35 above.)

73. The fact that this law firm in spite of its career in Granada litigation matters was not ashamed here to ask for fees, and is not ashamed to appeal in face of the canons of ethics and the findings of the District Court, conclusively shows how open and widespread are the breaches of trust that take place in receivership and reorganization matters in the City of Chicago. Your petitioner challenges all tendency among men of affairs in Chicago to condone such transactions and transgressions as are here portrayed, especially when done by large firms possessed of power and wealth. (See pages 69-70 below.)

74. Such conduct should not be protected by this court. It should be stopped by this court. The Congress of the United States amended the Bankruptcy Act for the avowed purpose of putting a stop to the scandalous and dishonest conduct of professional reorganizers, Indenture trustees and their equally commercial counsel. The Dis-

100. R. 414-415, PR. 781-782.

trict Court in the present case saw fit to apply that act to this proceeding saying:[101]

> "The judge deems that application of Chapter II and Chapter X of bankruptcy amendments approved by the President June 22, 1938, to this litigation is practicable and desirable."

Respondents did not argue otherwise in the Circuit Court of Appeals. That part of decree is not assailable.

75. If a self-appointed trustee and its self-appointed counsel may secretly represent adverse and hostile interests, and be awarded fees in a Federal reorganization proceeding for so doing, then the Chandler Act is a mockery. The canons of professional ethics are bombast. This petitioner submits that the Chandler Act could and should operate to the advantage and for the protection of unorganized and helpless bondholders and other innocent creditors. Any award of fees to counsel and other fiduciaries who have repeatedly violated the trust reposed in them, is a denial of the spirit and the letter of the Chandler Act, the Canons of Professional Ethics, and any other law designed to enforce common honesty and fair play.

76. It is not only the Court Trustee who urges the need of an authoritative review upon the question of double dealing by trustees, bondholder's committees and counsel. Chicago and hosts of widely scattered investors and helpless bondholders are speaking by this petition. It is to be noted that the District Court found that City National "trustee" had secured some 425 corporate reorganizations by use of this false bondholder's committee technique,[102] and its reorganization division.

78. The District Court found that no benefits had been conferred upon the Granada estate by the so-called Bondholder's Committee, City National or Counsel,[103] and

101. R. 408, PR. 772.

102. R. 415, PR. 782-783.

103. R. 416, PR. 783; R. 417, PR. 785; R. 414-415, PR. 781-782.

further that the assets of the estate had been depleted by the actions of these persons.[104] The Opinion of the Circuit Court of Appeals did not analyze the matter, and did not state that any valuable services had been performed by these persons and groups. Despite this that Court of Appeals orders the payment of fees to these groups from the monies held for the ravaged bondholders. In this attitude petitioner submits that the Court of Appeals was in manifest error. One outstanding purpose of the Chandler Act is swept away. All safeguards to control fiduciary conduct are swept away.

79. In the case of *Dickinson Industrial Site, Inc.* v. *Cowan*, 309 U. S. 382 at 388, 60 S. Ct. 595 at 599, this court said that:

> "The history of fees in corporate reorganizations contains many sordid chapters. One of the purposes of paragraph 77B was to place those fees under more effective control. * * * Fee claimants are either officers of the court or fiduciaries, such as members of committees, whose claims for allowance from the estate are based only on service rendered to and benefits received by the estate. (Sec. 243, 11 U. S. C. A., par 643.) Allowance or disallowance involves an exercise of sound discretion by the court based on that statutory standard."

80. On March 12, 1940, the firm of Defrees, Buckingham, Jones & Hoffman, wrote a letter to the three Judges of the United States Circuit Court of Appeals, who had heard the oral argument on February 23, 1940. This letter complained about certain designations of counsel contained in a "Chart of Personnel and Litigation mentioned on oral argument February 23, 1940" which was prepared and presented to the court by this petitioner.

81. On March 16, 1940, this petitioner filed with the Clerk of the United States Circuit Court of Appeals the

104. R. 416-417, PR. 784-785.

"Reply by Court Trustee to the letter * * * addressed to the court by the firm of Defrees, Buckingham, Jones & Hoffman * * *." This reply stated that the letter was "an admission of conduct forbidden by Sections 6 and 37 of the American Bar Association Canons of Professional Ethics." These canons were then set forth *haec verba* (See Appendix "E"), they deal with adverse influences and conflicting interests, express consent and full disclosure, and finally with the "confidences of a client." The reply then further stated:

> "This matter of multiple relationship by trustees, committees and counsel, without full and prior disclosure, has been given further discussion since the briefs in this Granada matter were filed, by article in the January 1940 issue of the Illinois Law Review, entitled 'Reorganization The Last Chance.'
>
> "Since this Granada case was argued there appears in the advance sheets *People* v. *Cody Trust Co.*, 301 Ill. App. 580, wherein said law firm is reported as representing the Cody Trust Company. At no time in the trial court or in the Circuit Court of Appeals did this law firm or any of its members disclose their relationship to any one of these six litigations, in which they are publicly reported to have represented the Cody Trust Company.
>
> "It remained for the Court Trustee to search the indexes of the Illinois Court Reports and mention the matter of need for disclosure to your Honors. That full disclosure was the duty of all members of said law firm is very plain in this record.".

The Opinion by the Circuit Court of Appeals does not mention this situation. This same Court of Appeals persuaded Your Honors to overrule all the other circuits and sustain discretionary power over appeals as to fees. Petitioner urges that such power is here used in arbitrary fashion. If this record stands, the District Courts must allow fees as requested in all cases. All the usual controls over fees for fiduciaries will be swept away.

82. Many of the findings of the trial court upon which

these breaches of trust are based were not challenged by being assigned as error by respondents. These findings which are admitted are set forth in Appendix "D" at page 63 of this petition. Petitioner wishes to call Your Honors attention particularly to findings 36, 44, 46, 48, 49 and 57 at pages 66, 67, 68 of said Appendix.

83. EX DOLO MALO NON ORITUR ACTIO. Under the title "First Salient Omission" the true status of the "Granada Bondholder's Protective Committee" has been discussed. This Committee was created by respondent City National Bank and Trust Company of Chicago, for the purpose of having this self-serving creature to petition the state court for the appointment of City National as trustee. The record shows that any authority of the Committee depended upon the deposit of bonds with it by the Granada Bondholders. The record also shows that no disclosure was made by the Committee to these bondholders that the Committee was staffed with City National employees, whose main purpose in creating the Committee was to have their employer, City National appointed trustee of Granada. THIS FAILURE TO DISCLOSE WAS FRAUD UPON THE BONDHOLDERS. Respondent City National gained possession of the Granada property as trustee by fraud. The trial court found that City National was a mere trustee *de son tort* and disallowed its claim for fees. To hold otherwise (as the Circuit Court of Appeals did), is to say that a right of action can arise out of fraud. In *Crichfield* v. *Bermudez Asphalt Paving Co.*, 174 Ill. 466, 51 N. E. 552, 558, Justice Magruder stated thus the applicable local law:

> "* * * the law will not lend its support to a claim founded on its violation."

At Point III on page 72 below, further citations are submitted.

C. MUST A CIRCUIT COURT OF APPEALS FUNCTION ACCORDING TO DUE PROCESS OF LAW AND DECIDE THE CASE ON THE ISSUES RAISED IN THE DISTRICT COURT, OR CAN IT WITHOUT NOTICE OR HEARING IN VIOLATION OF CONSTITUTIONAL LAW REVERSE THE TRIAL COURT'S FINDINGS, WHICH FINDINGS WERE NOT CONTESTED OR ASSIGNED AS ERROR IN EITHER COURT?

84. This petitioner urges that the United States Circuit Court of Appeals for the Seventh Circuit denied him that due process of law, which is guaranteed to Granada owners by the Fifth Amendment to the Constitution of the United States. This petitioner further contends that the "due process of law" to which that amendment refers is not confined to the proceedings and judgment of the trial court. An Appeal Court is not insulated from the Constitution. Due process may be denied by a departure from established procedure equal to a lack of notice and hearing in an appeal court, more violently and completely than it can be denied in a court of trial. This is especially true when the Court of Appeals reverses the trial court. But it is true even for an affirmance.

85. In *Lutcher & Moore Lumber Company* v. *Knight*, 217 U. S. 257, 30 S. Ct. 505 (1910), this court held that when a Circuit Court of Appeals affirmed a judgment of the Court below on a basis not in issue in the court below, without an opportunity to the parties to be heard upon that issue, it denied the Appellants their *"day in court"* or

> "was the equivalent to condemning them without affording them an opportunity to be heard."

86. In *Saunders* v. *Shaw*, 244 U. S. 317 (1917), this court ruled that another appeal court (Louisiana Supreme) deprived a litigant of due process of law, when it reversed the judgment on the basis of a proposition of

fact not in issue in either court without affording the litigant the opportunity to be heard on that fact.

87. In the case at bar the respondents were the Appellants in the Circuit Court of Appeals. As such they prepared a certain assignment of errors which did not contest certain major portions of the findings of the trial court. (See Appendix "D".) Since error was not assigned to certain of these findings and since these uncontested findings did in themselves provide a satisfactory basis for an affirmance of the findings of fact of the trial court, this petitioner (Appellee therein) had no reason to cite record evidence to sustain these findings.

88. The briefs of both parties did not discuss the evidence in support of or at war with these findings to which no error was assigned. It was understood by the parties that only those matters should be discussed in the Court of Appeals to which error was assigned, and that the respondents were limited in the number of their appealable points to that assignment of errors. The Circuit Court of Appeals did not so understand this basic and fundamental proposition of orderly procedure in conformance with due process of law. It acted to the contrary.

89. The Circuit Court of Appeals reversed ALL findings of fact of the trial court including those which had been admitted by the failure of respondents to assign as error. The effect of this was that *the Circuit Court of Appeals wrote new findings of fact* on questions not raised in that court.

90. As a result of the arbitrary refusal of the Court of Appeals to be bound by the pleadings and record that court

(1) created new issues of fact and law of which petitioner had
(2) no notice and therefore could not have
(3) his "day in court" or
(4) a reasonable opportunity to prepare as counsel.

All of these results of the appeal court's acts amount to a substantial denial of full hearing and notice, which are the fundamental requisites of due process of law.

91. But the Circuit Court of Appeals for the Seventh Circuit did not stop there. Not only did it decide the case upon *new issues of fact and law* without notice or opportunity to this petitioner to be heard, but it also refused to consider and did ignore the central issues of fact as established in the trial court. (Salient Omissions.) Thus only by devices of commission and omission did the Court of Appeals find it possible to reverse the trial court. By both devices this petitioner was deprived of property without due process of law.

92. This was a double violation of the Fifth Amendment to the Constitution of the United States of America. The extent to which said court went in this violation, shows conclusively that it believed itself as an appeal court was, unlike a trial court, not forced to operate under the limitations of justice as imposed upon all courts and administrative agencies by the Constitution of the United States.

93. This petitioner performs this unpleasant duty with deep regret, that his duties as Court Trustee impose upon him the necessity to state so fully what was done by the Court of Appeals, in apparent violation of orderly and due process of law, and in disregard of the Constitution of the United States.

94. This is particularly so in view of the fact that the case at bar is not an isolated instance of departure from established law and constitutional procedure by the Circuit Court of Appeals for the Seventh Circuit. Understatement of some matters and the forgetting of important central facts, was the method used in reversing another Granada appeal (104 Fed. (2d) 528) a year ago. Petitioner

submits that the same method was used to reverse and defeat the Prima Case, 88 Fed. (2d) 785.

D. MAY A COURT OF APPEAL REVERSE AND OVERRULE THE FINDINGS OF FACT BY THE TRIAL COURT, CONTRARY TO RULE 52 OF CIVIL PROCEDURE, AND WITHOUT ANALYSIS OF THE EVIDENCE UPON WHICH THOSE FINDINGS WERE MADE?

95. Throughout this petition it has been shown that the Circuit Court of Appeals ignored or overlooked many central and controlling pleadings, documents and other facts upon which the findings of fact of the District Court were based. It was further noted that the Opinion of the Circuit Court of Appeals did not contradict or mention most of the material contained in the court's findings. Despite this the Circuit Court overruled and reversed all findings by the District Court including those which were not denied or contested by respondents, and which were not mentioned by the Opinion of the Circuit Court.

96. Petitioner submits that the Circuit Court of Appeals in holding that:[105]

> "We have concluded those findings were without substantial support * * *"

without having analyzed the evidence upon which the findings were based, but on the contrary having demonstrated by its Opinion that it had boldly overlooked the uncontested record, and overlooked the evidence supporting the very few findings that were argued by respondents, and had overlooked the uncontradicted documentary evidence upon which such overlooked findings were based, was in manifest error and denied petitioner a day in court.

97. The action by the Circuit Court of Appeals was

105. PR. 953.

contrary to Rule 52 of the Rules of Civil Procedure (28 U. S. C. A. following Section 723 c) which in part states:

> "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

This is the old law rule now applied to all civil cases, and is the rule the Supreme Court has so firmly applied in many cases on review of findings by administrative bodies.

E. HAS A CIRCUIT COURT OF APPEALS JURISDICTION OF AN APPEAL TAKEN IN VIOLATION OF SECTION 250 OF THE CHANDLER ACT AND PRESENTED WITHOUT A RECORD HAVING BEEN FILED AS PRESCRIBED BY RULE 73 (G) OF THE FEDERAL RULES OF CIVIL PROCEDURE?

98. The motion to dismiss, renewed by petitioner on June 22, 1940,[106] state that appeal 7060 was taken by filing a notice of appeal in the District Court on June 1, 1939, and that appeal 6986 was based upon a petition for leave to appeal filed in the Circuit Court of Appeals on June 12, 1939. Both appeals, dealing with same subject matter and claim, were taken from the decree of the District Court dated May 2, 1939. The motion contended:

(a) That the two appeals competed with each other and as such the second appeal (6986) should be dismissed.

(b) That the only transcript of record as filed was filed with appeal 7060. No record was filed for appeal 6986 to comply with the rules.

(c) That in violation of Rule 73 (g) of the Federal Rules of Civil Procedure—Appellants (respondents) did not file their record within 40 days, and did not ask for an extension of time for so filing the record until the 48th day, and that since the time for filing the record had expired, the Court of Appeals

106. PR. 1007 and page 2 this petition.

had no jurisdiction or power to grant such an extension,—appellants already being in default at the time of their motion.

(d) That the Court of Appeals allowed the motion to enlarge the time for filing the record and that this order violated Rule 73 (g) of the Rules of Civil Procedure, which provided that the District Court and not the Court of Appeals had the power to grant such an enlargement of time.

(e) That as a result of the failure of appellants to comply with rules, appeal 6986 was left without a supporting record.

(f) That since the Court of Appeals had lost jurisdiction of 6986 on July 11, 1939, by failure of appellants to file the record, all subsequent orders by the Court of Appeals, including the order of consolidation were void.

(g) That since under the decisions of *Dickinson Site* v. *Cowan*, 309 U. S. 382, (104 Fed. (2d) 771 in this Court of Appeals) and *Shulman* v. *Wilson-Sheridan Hotel Company*, (86 Fed. (2d) 898), 301 U. S. 172, Appeal 7060 had failed for want of jurisdiction as not being properly taken (by leave instead of by right), all subsequent orders relating to 7060 were void, including the order of consolidation.

(h) That these appeals should both be dismissed for lack of jurisdiction. *In re Prudence Bonds Corporation*, 111 Fed. (2d) 37, (1940).

The Circuit Court of Appeals on July 3, 1940 denied these motions and further motions by the court trustee to retax the costs, pursuant to Section 250 of the Bankruptcy Act as amended.

99. Petitioner submits that the record clearly shows that the Circuit Court of Appeals had no jurisdiction over these appeals at any time after July 11, 1939, and that consequently the denial of each of these motions was error. These errors by the Court of Appeals more clearly will appear at IV of Supporting Brief below, page 73.

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT.

100. By this petition there is shown a denial of due process of law and a violation of the Fifth Amendment in the several ways now summarized as follows:

(a) The Circuit Court of Appeals reversed findings of fact of the District Court which had not been assigned as error nor challenged by the respondents herein. (Appendix "D".)

(b) The Circuit Court of Appeals refused to decide these appeals upon the issues of fact and law as established by pleadings and proofs in the trial court, and by the assignment of errors and briefs in the Court of Appeals. (Salient Omissions, Appendix "D" and Principal Questions Presented, C.)

(c) The Circuit Court of Appeals deprived this petitioner of property without prior notice or hearing when it reversed all findings of the trial court on the basis of new law and facts not in issue in either court. (Principal Questions Presented, C, and Supporting Brief I, II (a) and (b).)

(d) The Circuit Court of Appeals in violation of Rule 52 of the Rules of Civil Procedure reversed and overruled the substantial findings of fact of the District Court, without analysis of evidence upon which those findings were based. (Salient Omissions.) The court discusses fragmentary testimony, counts noses, and seeks to weigh some evidence, contrary to any power possessed by such court of review.

(e) Many of the findings of fact made by the District Court upon hearing in open court without a reference, which are ignored, not mentioned or discussed in the Opinion of the Circuit Court of Appeals, are reversed by an omnibus order.

(f) The Circuit Court of Appeals orders expense monies and fees paid to a City National committee which, in violation of its fiduciary duty to the bondholders, had represented adverse and hostile interests without disclosing such facts to the bondholders or creditors. This despite the fact that any allowance of fees would be contrary to the express terms of the depositary agreement which specifies that there shall be no fees for the committee.

(g) The Circuit Court of Appeals orders fees paid to a bondholders committee, which had by pleading admitted that it did not take any constructive action in the reorganization of the debtor estate, but as shown by the record, had committed wrongs and injustices to said estate. (Appendix "D"; page 67, paragraph 40; page 68, paragraph 57.)

(h) The Circuit Court of Appeals orders fees paid to City National as former voluntary trustee, which in violation of its fiduciary duty to the bondholders and the debtor estate, had represented adverse and hostile interests without disclosing such facts to Granada owners.

(i) The Circuit Court of Appeals orders fees and expenses paid to City National as such trustee, who had by pleadings admitted that it had not at any time tried to have the prior fiduciaries perform their promises to the debtor estate or its bondholders had allowed statutes of limitation to run, and had itself committed wrongs and injustices to the debtor estate. (Appendix "D", page 66, paragraph 36; page 68, paragraph 57.)

(j) The Circuit Court of Appeals orders fees paid to a firm of attorneys that had in breach of trust and ethics represented adverse and hostile interests without disclosure and consent, causing loss and detriment to the debtor estate. (Principal Questions Presented B; Supporting Brief III, and Appendix "E", pages 38-45, 69-72.)

(k) The Circuit Court of Appeals orders fees paid to a firm of attorneys, such trustee and such committee, all of whom had by pleading admitted that they had represented the former unfaithful fiduciaries, had tried to thwart and stay earlier Federal Reorganization proceedings, had represented adverse interests, and had committed many wrongs and injustices to the debtor estate. (Appendix "D", page 67, paragraph 44; page 67, paragraph 46; page 67, paragraph 48.)

(l) The Circuit Court of Appeals in violation of Section 250 of the Chandler Act asserted jurisdiction over an appeal for fees, which had been taken as of right by the filing of a notice of appeal in the District Court, and further erred in denying this petitioners motion to dismiss such appeal and to retax costs. (Principal Questions Presented E and Supporting Brief IV, pages 50-51, 73.)

(m) The Circuit Court of Appeals in violation of Section 73 (g) of the Rules of Civil Procedure, and contrary to said Section 250, and without power to enter such an order, allowed respondents motion to grant new time within which to file the record (Principal Questions Presented E, Supporting Brief IV (b)), and then without record being filed, ordered a consolidation with the adverse prior and competing appeal taken as of right by respondents.

(n) After the respondents had been eight days in default in completing appeal, they filed a motion to grant new time within which to file their record, and the Circuit Court of Appeals erred in granting such motion, because by reason of the default the Court of Appeals had lost jurisdiction over the appeal. (Principal Questions Presented E, Supporting Brief IV (a), pages 50-51, 73.)

(o) The Circuit Court of Appeals denied to petitioner an orderly proceeding adapted to the nature of the case. The procedure used by the Court of Appeals was not predictable under the prior rules and applicable statutes,

but was so unreasonable arbitrary and capricious as to accomplish a destruction of the substantive rights of petitioner: Supporting Brief I.

(p) Although the meaning of applicable rules and statutes was expressed in plain language not open to interpretation, the Circuit Court of Appeals makes an adverse and arbitrary application of said rules and statutes, contrary to judicial power and duty. (*New National Coal Company* v. *Industrial Commission,* 373 Ill. 468.)

(q) Aside from constitutional considerations this court should allow the writ because there is A CONFLICT BETWEEN THE SIXTH AND SEVENTH CIRCUIT COURT OF APPEALS ON A SUBSTANTIAL QUESTION OF JURISDICTIONAL LAW, *i. e.,* the jurisdiction and power of a bankruptcy court to review and readjust in a reorganization proceeding awards of fees made by a state court in a prior foreclosure proceeding. In the instant case the Seventh Circuit held[107] that the Federal Bankruptcy Court had *no such power* to disturb the state court award. Recently the Sixth Circuit in *Butzel* v. *Webster Apartments Company,* 112 Fed. (2d) 362, 364 (1940) held that the Federal Court had the power and duty under the Bankruptcy Act, to so review and readjust improvident fee awards of state courts. Certiorari should be granted by this high court for the purpose of settling this conflict between these two important circuits.

IN CONCLUSION.

101. There is a situation at Chicago which needs correction by the Supreme Court. The record discloses that some corporate trustees are untrustworthy. By these and other like minded trustees, foreclosure and reorganization proceedings are made a golden opportunity. Waste, neglect and breach of duty have become a menace to scat-

107. PR. 961-963.

tered investors. "Bondholder Committees" created by would-be corporate trustees are the wedges that procure the appointment of unworthy trustees. Some firms of attorneys cooperate with these unlawful activities.

102. First Indenture Bonds are issued. The proceeds are not used for the purposes stated in the prospectus. Furniture and other items were to be purchased outright and be security; but without disclosure to bond buyers, are purchased upon chattel mortgages. Second Junior Bond issues are floated to keep the unpaid creditors from seizing the property. Commissions, lawyers fees, interest on the chattel mortgages and bond issues accumulate, while the property depreciates. Fake foreclosure proceedings are filed by a nominee of the bankers and trustees. Begun in June 1930, the suit lags for 78 months. Fees and commissions are again paid. Receivership certificates are issued, and new furniture is purchased from furniture company organized as a subsidiary by the bond floaters. Bond issue houses and trust companies collapse under the burden of their duplicity, misrepresentations and mismanagement. New trust companies take over their assets and their lawyers, but seek not to assume their liabilities.

103. Not receiving any income for five years, bondholders and creditors in despair file involuntary reorganization proceedings in the Federal Courts. The proceedings are defeated on a narrow technicality, by the respondents now at bar.[108] A new foundation is laid for bondholder proceedings and new federal proceedings are filed. Then in 1937 the sordid picture is revealed for the first time. The conscience of any court should be aroused by these revelations. In accomplishing these delays and frauds, the respondents now at bar have made use of the process of this Supreme Court, in *Tuttle* v. *Harris,* 297 U. S. 225, and of many other courts, page 59 below.

108. *Tuttle* v. *Harris,* 297 U. S. 225.

104. Professional apologists appear in the guise of "counsel" and tell the District Court that there is nothing wrong, but that even if there is, the City National is not to blame. The sins were committed to former fiduciaries. The court finds that the professional apologist was counsel for both the defunct fiduciaries and the successor City National, and further finds that the City National had a department which had "serviced" the trust in question for the former fiduciaries. The District Court rules that City National is responsible for loss due to its failure to demand an accounting from former fiduciaries.

105. The District Court holds that the lawyers representing for fifteen years adverse and hostile interests without disclosure, breached their trust and professional ethics and disentitled themselves to fees. The ruling of the court is the same as respects the claims for fees and expenses by City National and its "Bondholder Committee," which had been created by City National for the sole purpose of securing the appointment of City National as trustee. The court rules that instead of contributing to the assets of the debtor property, these persons and groups of persons have deleted the assets and scuttled the debtor corporation, its predecessor and the bondholders.

106. The lawyers pretend to be astonished. An appeal by them claims that the ruling by the District Court was prejudiced and unfair. The Court of Appeals reverses the trial court. In its Opinion the court of review by the expedient of omission does not mention that the lawyers continued hovering at the scene of financial failure, nor does it mention their breaches of trust. The bondholders are shorn and reshorn. These lawyers are both midwife and undertaker. They seek to be paid by debtor estate for both services. The record shows no advantage but only great loss to the estate.

107. The representative of those bondholders is now

before this high court with his petition for certiorari. He asks for due process of law and justice to the end that Federal reorganization may deny fees to those who have for years in breach of trust bled this mismanaged bondholder's equity. The Court Trustee submits that the debtor estate did not receive *due process* of law in the United States Circuit Court of Appeals for the Seventh Circuit. The action of that court was such as to call for review and reversal by the Supreme Court of the United States.

PRAYER FOR RELIEF.

108. WHEREFORE, petitioner prays the allowance of a writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit, to the end that the cause herein may be reviewed and decided by this court, and that the decree and orders herein by said Circuit Court of Appeals may be reversed, and for such relief as to this court may seem meet.

WEIGHTSTILL WOODS,
Attorney for Petitioner.

APPENDIX "A".

Litigation Chart.

A Decade of Litigation (1928-1938).

Year	Title	Citation	Nature of Case
1928	*Albert Pick & Co.* v. *Granada Hotel Corp.*	Circuit Ct. of Cook Co.	Foreclosure on chattel mtge. on Granada furniture.
1928	*Wendstrand* v. *Pick & Co.*	U. S. District Court	Complaint for injunction to stop sale of furniture. Denied.
1930	*Wendstrand* v. *Pick & Co.*	88 F. (2d) 25	Appeal to C. C. A. 7th. Affirmed.
1930	*Wendstrand* v. *Pick & Co.*	281 U. S. 768	Petition for Writ of Certiorari denied.
1930	*Pick & Co.* v. *Indemnity Insurance Co. of North America*	U. S. Dist Ct.	Suit on bond in Wendstrand suit. $60,000 damages demanded.
1930	*People* v. *Granada Hotel Corp.*	50985 in Superior Court of Cook Co.	Dissolution of corporation by Atty. General of Illinois.
1930	*Thuma* v. *Granada Apts. Inc.*	519151 in Superior Court of Cook Co.	Partial foreclosure. (1928 2d Mtge. Bonds).
1933	*Appeal of Pick & Company*	269 Ill. App. 484	Determination of whether furniture was part of Real Estate. Held to be personal property.
1935 March	*Tuttle* v. *Harris*	U. S. Dist. Ct. No. 59143	Reorganization proceeding against old Granada Hotel Corp. Dismissed on May, 1937 on mandate from Supreme Court.
1935 April	Second Petition for Reorganization	U. S. District Court	Reorganization against Granada Apts. Inc. Dismissed in May, 1937 by Judge Barnes.
1935	*Tuttle* v. *Harris*	No. 5488 in C.C.A. (7th)	Appeal on question of whether foreclosure receivership was act of bankruptcy. Held: Yes.
1936	*Tuttle* v. *Harris*	297 U. S. 225	Supreme Court held that this was not an act of bankruptcy. Reversed.
1937	*Rosenberg* v. *Granada Apts., Inc.*	Mun. Ct. of Chicago No. 2778211	Suit on Bond delinquency. Judgment entered 3-8-37. No. 4630.
1937	*Rosenberg* v. *Granada Apts., Inc.*	Cir. Ct. Cook Co. No. 37C3704	Suit for Appointment of receiver. (Creditor's Bill.) Receiver appointed 4-14-37.
1937	*In re Granada Apartments, Inc., Debtor.*	U. S. Dist. Ct., Danville, Ill.	Involuntary pet'n for reorganization under 77B proceedings. This was consolidated with next action below.
1937	*In re Granada Apartments, Inc., Debtor.*	U. S. Dist. Ct., Chicago, No. 65811	Voluntary pet'n for reorganization under 77B. (Danville pet'n transferred to Chicago to be heard with this case).

(See voluntary testimony of respondent's witness PR. 473-504.)

APPENDIX "B".

Former Fiduciaries.

CHICAGO TRUST COMPANY	Original "house of issue" of Granada bonds (1924) and co-sponsor with the Cody Trust Company of the (1928) issue. Author of the two prospectuses which represented that furniture was security for bondholders. Trustee under 1924 and 1928 Trust Deeds. Consolidated with Central Trust Company in July of 1931.
CODY TRUST COMPANY	Formed in 1928 by the Codys, Riddle and others as a new house of issue. Co-sponsors with the Chicago Trust Company of a new first mortgage (1928) and second mortgage bond issue. Officers of this company were officers of Granada Apartments, Inc. from 1929 to 1934 and as such controlled all policies. Cody Trust Company has been dissolved.
CHICAGO TITLE & TRUST CO.	Was appointed nominal receiver of Granada under the Thuma partial foreclosure of June, 1930. Order of appointment provided it could not disturb the (Cody) management in control. This disability was later (Jan. 12, 1934) removed. Relinquished receivership to Central Republic March 22, 1934.
CENTRAL TRUST COMPANY	Partner with Chicago Trust Company in the consolidation of July, 1931.
CENTRAL REPUBLIC BANK AND TRUST COMPANY	The name assumed by the consolidated company. It became the successor trustee under the 1928 trust deeds.
CENTRAL REPUBLIC TRUST CO.	The new name assumed by the Central Republic Bank and Trust Company after that organization eliminated its deposit banking business which was taken over by City National Bank and Trust Co., on October 5, 1932. It became the successor to the Successor Trustee.

(See voluntary testimony of respondent's witness PR. 473-504.)

FORMER FIDUCIARIES (*Continued*).

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO	Former Trustee in the Superior Court foreclosure proceedings, and present Granada Depository and Transfer Agent as appointed by the Federal District Court. Was claimant and counter-claim defendant in the court below where charges of mismanagement and preference by City National, were made by the Court Trustee, and is respondent herein.
THE CORPORATE REORGANIZATION DIVISION	A department at the City National Bank and Trust Company, which was a business getting device for that bank. Officers and employees of this department were members of the Granada Bondholders' Protective Committee. By this department 425 corporate reorganizations have been secured for City National.
GRANADA BONDHOLDERS PROTECTIVE COMMITTEE	Formed by and including officers of the City National Bank and Trust Company of Chicago, who as members of "the Committee" named City National as Trustee in the state court proceedings.

(See voluntary testimony of respondent's witness PR. 473-504.)

APPENDIX "C".

Apartment Hotel Corporations.

GRANADA HOTEL CORPORATION	Predecessor of the debtor. Incorporated by Fred Mateer in 1924. Signer of bond issues. Dissolved by Attorney General in 1930.
GRANADA APARTMENTS, INC.	The debtor herein which filed its petition for 77B proceedings on April 23, 1937. Organized by Cody Trust Co. in 1929 as a hedge against the Pick claim which was not assumed by this new corporation.
GRANADA APARTMENTS HOTEL CORPORATION	Successor of the debtor herein.
THE GRANADA PROPERTY	A hotel-apartment house located at 525 Arlington Place, Chicago, Illinois. The chief possession of three successive Granada corporations, and several receivers and trustees. Furnished in 1924 with $120,000 worth of furniture. Owner of central heating, refrigeration, and water plant for other hotel properties.
ARLINGTON, INC.	The new corporation which owns the hotel-apartment house located at 530 Arlington place, across the street from Granada; former lessee of services from Granada heating and refrigeration plant. Built in 1924 by Mateer. Reorganized in Circuit Court of Cook County.
LINCOLN PARK MANOR HOTEL 500 Fullerton Parkway Corporation	A hotel-apartment house located on Fullerton Avenue across the alley to the rear of Granada, also a Mateer development, former and present lessee of heat, water and refrigeration services from Granada. Built in 1924.

APPENDIX "D".

Findings of Fact by the Trial Court to Which Respondents Did Not Assign Error.

Paragraph of the court's findings	Record	Portion of the Paragraph Admitted
1	R. 406, PR. 769	All of paragraph.
2	R. 406, PR. 769	All of paragraph, except the words "under Chapter II and X of amended law."* [Not argued by respondents.]
3	R. 406, PR. 769	All of paragraph.
4	R. 406, PR. 769-770	All of paragraph, except words "to defend, and is now carrying on this litigation by order of the court."* [Not argued by respondents.]
5	R. 406, PR. 770	All of paragraph.
6	R. 407, PR. 770	All of paragraph.
7	R. 407, PR. 770-771	All of paragraph.
8	R. 407, PR. 771	All of paragraph.
9	R. 407, PR. 771	All of paragraph.
10	R. 408, PR. 771-772	All of paragraph, except words "The Judge deems that application of Chapter II and Chapter X of bankruptcy amendments approved by the President June 22, 1938, to this litigation is practicable and desirable. The decree herein shall so provide."* [Not argued by respondents.]
11	R. 408, PR. 772	All of paragraph including "a copy of the prospectus upon which the Granada bonds were sold is in this record. It specifically states that the furniture and fixtures at Granada are part of the security for the bondholders' money, in addition to the real estate at Arlington Place, consisting of land and hotel building."
12	R. 408, PR. 773	All of paragraph except the words, "Mr. Mateer owned the corporate stock."* [Not argued by respondents.]
13	R. 408-409, PR. 773	All of paragraph.
14	R. 409, PR. 773	"Granada Hotel Corporation, an Illinois Corporation, (not the debtor) was organized and signed the bonds marketed in 1924 by the Chicago Trust Company as a house of issue. * * * Albert Pick & Company of Chicago supplied the furniture on open account and chattel mortgage * * * what became of that much furniture is not shown by the record."

* Although specified as error, this point was not discussed in respondents' briefs in the Circuit Court of Appeals.

Paragraph of the court's findings	Record	Portion of the Paragraph Admitted
15	R. 409, PR. 773-774	None of paragraph.
16	R. 409, PR. 774	"A prospectus was issued by Chicago Trust Company, and a separate one by Cody Trust Company. Both of these documents are in the record; they repeat the announcement made to the bondholders in 1924, that the security includes the furniture and fixtures at Granada Hotel." (This related to the new refinancing in 1928 which was also admitted.)
17	R. 409-410, PR. 774	All of paragraph except words "In the Wenstrand suit in this court bonds were given of $5,000, $20,000 and finally $40,000 to stay the sale."* [Not argued by respondents.]
18	R. 410, PR. 774-775	All of paragraph.
19	R. 410, PR. 775	All of paragraph except words "To protect those who initiated the bond issue and sold the bonds, another employee or nominee of Cody Trust named Thuma, was now used to file on June 10, 1930, a suit for partial foreclosure in the Superior Court of Cook County upon a claim of default upon certain interest coupons of the 1928 second mortgage Granada issue."* [Not argued by respondents.]
20	R. 410, PR. 775-776	The furniture was taken away from Granada and new furniture purchased from a company which not a business firm.
21	R. 410-411, PR. 776	All of paragraph.
22	R. 411, PR. 776	"There was no assumption (by Granada Apartments, Inc.) of furniture indebtedness. This was expressly excluded along with claims of all the general creditors of the Granada Hotel corporation. Having made the 1928 issue in this manner, the bankers used some of it to retire the 1924 issue, but did not pay off the furniture indebtedness."
23	R. 411, PR. 776-777	"This Granada Apartments, Inc., from its beginning was officered by employees of Cody Trust Company, and was wholly under its control."
24	R. 411-412, PR. 777	"Indemnity Insurance Company of North America wished to be released from all those damage claims and suits. * * * Since then Seventy-five Hundred ($7500) Dollars additional has been paid from Granada funds in reduction of the receiver's certificate. * * *"

* Although specified as error, this point was not discussed in respondents' briefs in the Circuit Court of Appeals.

Paragraph of the court's findings	Record	Portion of the Paragraph Admitted
25	R. 412, PR. 777-778	"For said $4,000 face balance and interest, a claim was made in this court against Debtor estate. * * * The Superior Court was not informed about the damage claims and proceedings on the Wendstrand and appeal bonds * * * it was not known (to any court or Granada creditors) that officials of Cody Trust Company and Wendstrand had agreed to purchase the receiver's certificate if it was not paid off out of Granada funds; nor was it known * * * that Wendstrand and others are indemnitors upon all the Wendstrand bonds in this court."
26	R. 413, PR. 778	"* * * that Codys and the Chicago Trust Company both had represented to the bondholders and the public through the mails in 1924 that furniture and personal property at Granada was part of the security; and that Cody Trust Company and Chicago Trust Company had made the same representation again in 1928 in relation to the refinancing * * *;"
27	R. 412, PR. 779	All of paragraph.
28	R. 412-413, PR. 779	"The last interest paid to any bondholders was to pay first mortgage coupons for 1931. * * * None has been paid since."
29	R. 413, PR. 779	"All the litigation prior to August 1933, had affected only the second mortgage trust deed. In that month the cross bill to foreclose the first trust deed was filed; and immediately this receivership certificate was asked for. * * * Decree of foreclosure was not entered until December 18, 1936, which was more than forty months later."
30	R. 413, PR. 779	None of paragraph.
31	R. 413, PR. 779-780	"* * * the main and controlling purpose of I. I. C. N. A. in advancing $11,500 was to save itself from liability in said damage suit, and secure release of same. This was accomplished by a stipulation for dismissal filed in this court, signed not only by Albert Pick & Company, but also by respondent and International & Industrial Securities Corporation, to whom this Granada money was paid."
32	R. 413-414, PR. 780	All of this paragraph except words, "Nominees of Cody Trust Company operated the property until January, 1934."* [Not argued by respondents.] And "At that time school tax warrants owned by Granada needlessly were sold at a discount."

* Although specified as error, this point was not discussed in respondents' briefs in the Circuit Court of Appeals.

Paragraph of the court's findings	Record	Portion of the Paragraph Admitted
33	R. 414, PR. 780-781	"At that time (March 1934) until the Central Republic Trust Company went into receivership near the end of 1934, the City National Bank and Trust Company furnished the personnel and service on the trusts including the Granada matter, as to which the Central Republic Trust Company was nominal trustee." "When Central Republic * * * went into receivership an order was secured * * * on motion of Granada Bondholders Committee to appoint City National * * * as * * * successor trustee. * * * The Bondholders Committee filed a petition requesting that action by the court."
34	R. 414, PR. 781	"It (the Bondholders Committee) had been organized in April 1933, by and among minor officers, employees and nominees of City National Bank and Trust Company."
35	R. 414, PR. 781	"It is admitted by the pleadings and in evidence here that Mr. Hall was so retained to represent and to keep informed the Cody Trust Company and their successors in interest. When the Court took possession of the property, claims were filed upon Granada bonds of the 1928 issue of second mortgage (by) * * * Cody Trust Company."
36	R. 414-415, PR. 781-782	"The records show that the attorneys whom they (City National) now retain, have been active in all these matters since 1924, and have had to do with most of these litigations. It does not appear that City National or anyone tried at any time to have the Codys or the Cody Trust Company or its officials, or the Chicago Trust Company, or its officials, or any successors or receivers for them, or Wendstrand and the other indemnitors on the court bonds that were released by buying the Pick furniture the second time with bondholders' money, and buying new furniture from LaSalle Furniture and Supply Company when Pick & Company took away part of the furniture, to have any of these persons perform their promises and duty to the Granada property and the Granada Bondholders."
37	R. 415, PR. 782	None of paragraph.
38	R. 415, PR. 782-783	"At date of its charter, October 5, 1932, City National took over from Central Republic Bank and Trust Company, and now continues as part of its trust department a personnel organized and called the Corporate Reorganization Division."

Paragraph of the court's findings	Record	Portion of the Paragraph Admitted
39	R. 415-416, PR. 783	All of paragraph including "The Lincoln Park Manor is still in process in that court. For it there is a similar City National Bondholders Committee. City National was trustee for both Arlington and Lincoln Park Manor."
40	R. 416, PR. 783	"The Committee when formed by City National included representation from Cody Trust Company. * * * The minutes produced in this court to show what action was taken by the Granada Committee, do not show that any constructive action was ever taken looking toward a reorganization of the Granada property. The only matter recorded prior to discussion of the present proceedings in this court was refusal to accept an offer of twenty cents per dollar face value for the bonds on deposit with the committee and City National as its depositary."
41	R. 416, PR. 783-784	None of paragraph.
42	R. 416, PR. 784	None of paragraph.
43	R. 417, PR. 784-785	None of paragraph.
44	R. 417, PR. 785	"(one set of attorneys) have prepared the financial papers and (represented) Chicago Trust Company, Thuma, and also * * * Central Republic Trust Company, and City National Bank and Trust Company and the Bondholders Committee for Granada property."
45	R. 417, PR. 785-786	None of paragraph.
46	R. 417-418, PR. 786	* * * "In present reorganization case, City National and said attorneys filed in writing objection and motion to dismiss on May 17, 1937, in an effort to thwart and stay all action by this court."
47	R. 418, PR. 786-787	None of paragraph.
48	R. 418, PR. 787	"City National Exhibit 'X' was prepared by Defrees, Buckingham, Jones and Hoffman, attorneys. They are in this court in this accounting litigation, representing City National, the Granada Bondholders Committee and a separate accounting suit against Arlington, Inc. * * * They filed the Thuma partial foreclosure on the Granada property in 1930. * * * At that time these attorneys withdrew as counsel for Thuma, and immediately appeared on the opposite side of the record as counsel for Chicago Trust Company, then for the Bondholders Committee, and then for City National. These attorneys have represented throughout, the Bondholders Committee for the Granada, the Arlington and the Lincoln Park Manor properties, and likewise the City National as Trustee for these properties."

Paragraph of the court's findings	Record	Portion of the Paragraph Admitted
49	R. 418-419, PR. 787-788	"Neither the attorneys nor the Bondholders Committee, nor the City National presented any plan at any time to the bondholders or anyone else for the joint operation or unit reorganization of the three properties. * * * From that time (May 1929) until now these properties were bondholders equities. No person in a confidential relationship to one of these properties could rightfully represent another."
50	R. 419, PR. 788	None of paragraph.
51	R. 419, PR. 788	"After 1931 no interest was paid to first or second mortgage bondholders: the tax bill unpaid rose from about $30,000 in 1931 to about $60,000 in May 1937."
52	R. 419, PR. 788	None of paragraph.
53	R. 419, PR. 788-789	None of paragraph.
54	R. 419, PR. 789	None of paragraph.
55	R. 419-420, PR. 789-790	None of paragraph.
57	R. 420, PR. 790-791	"The court does not intend to minimize, but does recognize the many wrongs and injustices to the debtor estate shown by this record, which have been committed by City National, by the Bondholders Committee and by their attorneys and counsel; the court finds that all equities are with the Court Trustee; but the court believes that justice to all concerned will be rendered more speedily if the opposing claims and contentions are set off against each other. * * *"
58-72	R. 421-422, PR. 791-793	None of these paragraphs.

[Respondent's Assignment of Errors upon which this Digest is based is to be found at pages 817 to 832 of the Printed Record. The findings of the District Court are at pages 769 to 795 of the printed record.]

APPENDIX "E".

Chicago Bar and American Bar Association Canons of Professional Ethics.

"6. Adverse Influences and Conflicting Interests.

"It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

"It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interest when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

"The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed."

"37. Confidences of a Client.

"It is the duty of a lawyer to preserve his client's confidences. This duty outlasts the lawyer's employment, and extends as well to his employees; and neither of them should accept employment which involves or may involve the disclosure or use of these confidences, either for the private advantage of the lawyer or his employees or to the disadvantage of the client, without his knowledge and consent, and even though there are other available sources of such information. A lawyer should not continue employment when he discovers that this obligation prevents the performance of his full duty to his former or to his new client."

The "Chandler Act".

By Section 249 of the Chandler Act, Congress enlarges the rule and policy which forbids conflicting interests as follows:

> "No compensation or reimbursement shall be allowed to any committee or attorney, or other person acting in the proceedings in a representative or fiduciary capacity, who at any time after assuming to act in such capacity has purchased or sold such claims or stock, or by whom or for whose account such claims or stock have, without the prior consent or subsequent approval of the judge, been otherwise acquired or transferred."

The callous disregard of these canons and rules of conduct, and the duty in equity to make disclosure to beneficiaries (bondholders) before representing adverse interests, has been repeatedly shown throughout this petition. This indifference to honest dealing is not limited to the respondents. A committee of Congress found that other large law firms at Chicago are commercially minded.[109] The public interest invites the Supreme Court to deal effectively with this situation, through the medium of the present record.

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109. "Final Report by the Select Committee to Investigate Bondholders Reorganizations" (authorized by House Resolution 412, 73rd Congress, 39, 79 and 354, 74th Congress, Adolph J. Sabath, Chairman, U. S. Government Printing Office, 1938); pages 60-61.

SUPPORTING BRIEF.

I.

If a Case Is Arbitrarily and Capriciously Decided, in Violation of Settled Principles of Law, or Contrary to Undisputed Facts, Though the Court So Deciding Has Jurisdiction, the Judgment Is in Violation of Due Process of Law Under Either the Fourteenth or Fifth Amendments and the United States Supreme Court Should and Will Review and Correct the Error.

Postal Telegraph Cable Co. v. *City of Newport,* 247 U. S. 464, 38 S. Ct. 566; (1918).

Williams v. *Tooke,* 108 F. (2d) 758, 759 (C. C. A. 5, 1940).

Cities Service v. *Dunlap,* 308 U. S. 208 (1939).

II.

Circuit Courts of Appeals and Other Courts of Review Are Bound to Proceed in Accord With Due Process of Law.

Lutcher & Moore Lumber Co. v. *Knight,* 217 U. S. 257, 30 S. Ct. 505 (1910).

Saunders v. *Shaw,* 244 U. S. 317 (1917).

(a) When the Circuit Court of Appeals reversed findings of fact of the District Court, which findings had not been contested by respondents in their assignment of errors or otherwise, it violated due process of law because that action denied this petitioner notice, hearing and his day in court.

Saunders v. *Shaw,* 244 U. S. 317 (1917).

Lutcher & Moore Lumber Co. v. *Knight,* 217 U. S. 257, 30 S. Ct. 505 (1910).

Morgan v. *United States,* 304 U. S. 1 (1938).

Principal Questions Involved, C, p. 47.

(b) When the Circuit Court of Appeals reversed the findings of the District Court and in effect wrote new findings of fact it denied this petitioner a full hearing in violation of due process of law, because the new findings of fact excluded and ignored facts which should have been considered, and did not embrace the basic facts at issue as shown by the record.

Morgan v. *United States,* 298 U. S. 468 (1936).

"Salient Omissions" this petition.

Principal Questions Involved, C, p. 48.

(c) Assignments of error which are not discussed in Appellant's brief are abandoned and should be dismissed outright.

Andrews v. *Drake,* 83 Fed. (2d) 767 at 774.

Mittry Bros. Const. Co. v. *U. S.,* 75 Fed. (2d) 79 at 82.

U. S. v. *Hayes,* 20 Fed. (2d) 873 at 877.

(d) Decree should be affirmed for failure to argue the substantial assignments of error in Court of Appeals.

E. R. Squibb and Sons v. *Mallinckrodt Chemical Works,* 293 U. S. 190.

III.

Under Illinois Law City National, the Bondholders Committee, and Their Counsel Were Guilty of a Breach of Trust and Fiduciary Duty When They (Without Notice or Disclosure) Represented as Trustee and Agent the Adverse Interests of Arlington Inc. and Others.

Lerk v. *McCabe,* 349 Ill. 348, 182 N. E. 388 (1932).

Chicago Title & Trust Co. v. *Schwartz,* 339 Ill. 184, 171 N. E. 169 (1930).

Metcalf v. *Metcalf,* 286 Ill. App. 10, 2 N. E. (2d) 760 (1936).

Principal Questions Presented, A, p. 36; B, p. 38.

Chicago and American Bar Association Canons of Professional Ethics "6" and "37", Appendix "E", p. 69.

IV.

The Circuit Court of Appeals Erred in Not Dismissing These Appeals as Requested by Petitioner's Motions, Since Appeals Taken by the Wrong Manner Do Not Confer Jurisdiction.

In Re Prudence Bonds Corporation, 111 Fed. (2d) 87.

In Re Dickinsor, 309 U. S. 382.

Alaska Packers v. *Pillsbury,* 301 U. S. 174.

Union Trust Company of Maryland v. *Townshend,* 101 Fed. (2d) 903 at 914.

(a) The order of the Circuit Court of Appeals on July 21, 1939, granting an extension of time to file record (as asked by the motion of July 19, 1939), was void and ineffective since appellants were in default when the time expired on July 11, 1939.

West v. *Irwin,* 54 Fed. 419 (C. C. A. 7).

(b) The order of the Circuit Court of Appeals granting an extension of time within which to file the record was void. The Federal Rules of Civil Procedure gave that exclusive power only to the District Court.

Rule 73 (g) of the Federal Rules of Civil Procedure, page 51, this Petition.

V.

Delaying Creditors by Any Means Is a Fraudulent Transaction and Forbidden by the Statutes of Frauds.

Weber v. *Mick,* 131 Ill. 520.

Sherwin Williams Co. v. *Watson Industries,* 361 Ill. 599 at 605.

Adams v. *Deem,* 296 Ill. App. 571.

VI.

By Statute in Illinois Which Reenacted an Act of 13 and 29 Eliz. 1568 and 1684, No Transaction in Court or Outside, Aids a Fiduciary or Binds a Beneficiary of Trust, No Matter How Solemnly a Release Is Made, Unless and Until There Has Been a Prior and Complete Disclosure Honestly Made.

Chap. 59, Section 4, Ill. Rev. Stats. 1939.

White v. *Sherman,* 168 Ill. 589, 605, 610.

Kinney v. *Lindgren,* 373 Ill. 415, 422.

Nonnast v. *Northern Trust Co.,* 374 Ill. .....

VII.

Corporate Trustees Are Held to a High Degree of Fidelity and Ability. "Trust Companies Seek This Character of Business, Claiming That They Are Specially Qualified and Financially Responsible." "Good Faith Alone Will Not Protect a Trustee, But He Must Also Exercise Diligence, Prudence and Absolute Fidelity."

In Re Clark's Will, 242 N. Y. S. 210.

Harrison v. *First Wisconsin Trust Co.,* 191 Wis. 23; 209 N. W. 945, 947.

Busby v. *First National Bank of Chicago,* 288 Ill. App. 500, 520; 6 N. E. (2d) 451 at 459.

United States National Bank and Trust Co. v. *Sullivan,* 69 F. (2d) 412 at 415.

VIII.

There Is a Direct Conflict Between the Ruling by Seventh Circuit Court of Appeals at Bar That a Foreclosure Decree Can Be Superior to the Bankruptcy Court, and the Contrary Ruling by the Circuit Court of Appeals for the Sixth Circuit That the Bankruptcy Statute and the Bankruptcy Court Are Paramount.

Butzel v. *Webster Apartments Co.*, 112 Fed. (2d) 362 at 366, (C. C. A. 6, 1940).

In Re Granada Apartments, Inc., 111 Fed. (2d) 834 at 839 (C. C. A. 7, 1940).

Bankruptcy Act, S. 77B, sub. i, 11 U. S. C. A. S. 207, sub. i, and Section 2(21) Chandler Act.

Second Salient Omission, p. 25.